



## SEANAD ÉIREANN

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*Dé Céadaoin, 8 Samhain 2006.*  
*Wednesday, 8 November 2006.*

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Chuaigh an Cathaoirleach i gceannas ar 11 a.m.

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*Paidir.*  
*Prayer.*

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### **Address by the European Union Ambassador to the United States.**

**An Cathaoirleach:** No. 1 is an address by Mr. John Bruton, European Union ambassador to the United States. I welcome the ambassador. It is my privilege today, on behalf of the Members of Seanad Éireann, to welcome His Excellency, John Bruton, Ambassador of the European Union to the United States. While words of welcome always have a certain formality about them, today in a real sense we know we have among us one of our own.

It was in 1969 at the age of 22 that John Bruton first entered upon the national political stage as a Member of Dáil Éireann. Since entering politics and a life of political service, he has served the people of Ireland in many distinguished roles, as Deputy and legislator, Minister, Leader of the Fine Gael Party and, ultimately, Taoiseach. It is not possible in these brief words of welcome to do justice to the breadth and depth of the contributions John has made to national political and parliamentary life from governance to institutional reform. On this happy occasion and knowing John's innate modesty, I will refrain from any such attempt. However, since Ireland acceded to the European Economic Community in 1973, the truly international nature of politics, economics and finance has unfolded with the benefit of extraordinary advances in communications. During those years, John has employed his own unique energy and talents, in whatever capacity he found himself, to play an active and guiding role in furthering the interests of the Irish State and its people.

Reality being what it is, no doubt he has had his own share of disappointments and encountered many frustrations, but always his vision and focus have remained fresh and vital. He is to be congratulated that nearly 40 years of political life have neither weakened his enthusiasm nor deflected his political vision. Now in his distinguished role as ambassador of the European Union to the United States, John's passion for, and commitment to, the democratic ideal will

ensure that his political career continues to remain rich in possibilities and challenges. It gives me great pleasure to invite His Excellency, John Bruton, to address Seanad Éireann.

**His Excellency, Mr. John Bruton:** A Chathaoirleach, a Leas-Chathaoirleach, Leader of the House, Members of all parties, I thank you for this remarkable privilege of being invited to address you. I thank the Cathaoirleach for the lovely words he has just spoken about me which I will always remember and which I deeply appreciate. It is a sign of the way in which the bipartisan nature of Irish politics has evolved in recent years that an invitation like this would be issued to me by a House where parties other than my own hold sway. I am especially grateful for that generous demonstration by the Leader and all in this House.

Coming to the end of my second year as European Union ambassador to the United States, an enduring impression I have from my travels around the US is the overwhelmingly positive image Ireland has all over America. In every state I have visited, Ireland is celebrated not only as the birthplace of parents or grandparents but also as a kind of economic miracle worker that has freed itself of the hardships that drove generations into emigration. Ireland's openness to workers from new EU member states is also much appreciated in cities such as Chicago, Cincinnati and Milwaukee where links to central and eastern Europe, Poland and the Baltic are very strong. Ireland's openness to those people is noted and appreciated. In short, Ireland's economic dynamism is often held up to me as a good example for the larger economies of continental Europe.

Tempting though it may be to lap this up uncritically, these conversations across America are telling. On the one hand, they are a reflection of Americans' unique enthusiasm for success, their openness to new things and ability to ask, without irony or envy, how we did it. Ireland is seen as a trailblazer, whereas other parts of Europe are often, quite unfairly, depicted as slow to change, addicted to subsidies, and not doing a great job of integrating Muslims or other minorities.

This undiluted admiration for Ireland's economic success, while always welcome, does set off some alarm bells. I am concerned our international reputation as feisty go-getters could lead us into an "if it ain't broke, don't fix it" complacency at home while creating impossible expectations abroad, particularly in developing countries, that economic miracles really do happen. Everyone in this Chamber knows well that Ireland's economic model was the result of more than 50 years of trial and error, mostly error at times. This fascination with Ireland's economic turnaround does not always take account of two very important ingredients, namely, European Union membership and United States invest-

[His Excellency, Mr. John Bruton.]

ment, which were mutually reinforcing aspects of our emergence as a thriving economy.

The Ireland of today and the Ireland of 1973 which joined the European Union are two different countries and almost different worlds. The Ireland of 1973 had a population of only 3 million, an economy heavily dominated by agriculture and little opportunity for young people of school-leaving age. Ireland today is among the fastest growing economies in Europe, a leader in information technology and financial services, and a country to which people emigrate in search of good jobs and quality of life.

Perhaps many in college today do not remember the other Ireland which existed before a visible and tangible improvement was made in Irish living standards relative to the EU average. In 1988, after 15 years of EU membership, Ireland's income per head was still only 70% of the EU average. However, in the second 15 years, Irish income per head greatly increased, reaching 122% of the EU average in 2005. Our delayed progress during the first 15 years of EU membership was due to a mistaken attempt to stimulate the economy by borrowing in the late 1970s, and a high dependency ratio. The dependent children of the 1980s transformed into the young adults who launched the tiger economy of the 1990s.

Ireland continues to gain enormously from EU membership. What is not known widely is that it also continues to gain disproportionately from the EU budget. This is because of the Common Agricultural Policy and the regional funds. Ireland is now one of the richest countries in the EU in gross domestic product, GDP, terms. However, last year Ireland received a net income from the EU budget of €588 for every citizen, while Latvia received only €168 per person. This is more than three and a half times as much on a *per capita* basis. We might remember that when seeking an explanation why so many Latvians want to live here. Since Ireland joined the EU, net transfers to Ireland have amounted to approximately €10,000 for every person now living in the State.

In other ways, the European Union has been hugely beneficial. It lifted Ireland out of its obsession with an inherently unequal relationship with its neighbouring island. It widened our horizons, gave us access to a huge European market and thus enabled us to attract US investment on an undreamt-of scale. The total value of US investment in Ireland today, attracted here by our EU membership since 1973, is \$61 billion, or approximately \$15,000 dollars per person living here.

Foreign-owned companies, mainly from the US, produce almost 80% of all manufacturing output and 90% of all manufactured exports in Ireland, although they account for only half of all manufacturing jobs. In other words, the jobs created by foreign investment are very high productivity jobs.

The boost to productivity in Ireland from foreign investment has been major. In 1993, productivity in Ireland grew by only 1%. In 1994, it grew by 2.8%. However, in 1997, it grew by 6.7% in one year, probably the highest rate of productivity growth ever recorded in Ireland. In 2005, productivity still grew, but the rate of growth had reduced to 2.8%, less than half the exceptional 1997 rate. Productivity has also grown this year. The challenge for Ireland is to spread the same rate of increase in productivity achieved in the foreign owned sector to the rest of the economy, including private services, construction, Government services and retail and wholesale distribution. This is more easily said than done. One way to stimulate productivity growth throughout the economy is to ensure we use to the full the disciplines of the Single Market, and use them to tackle restrictive practices and barriers to competition. One key area where this can be done is in financial services.

Commissioner Neelie Kroes, responsible for competition policy, and Commissioner Charlie McCreevy, responsible for the Single Market, have shown great determination in tackling restrictive practices in Europe everywhere they find them. This is the great merit of the European Union, namely, it can act as a liberalising external discipline on member states in the interests of their own citizens and consumers. EU liberalisation has served Ireland well. In the first ten years of the internal market, from 1992 to 2002, freeing up markets added 1.8% to this country's GDP — an additional €877 billion in real terms, and an average of €5,770 for every household — and helped to create 2.5 million jobs throughout Europe.

Precisely because Ireland has benefited so much from American foreign direct investment and from a large European market for its goods and services, Ireland would be vulnerable to any change in the economic situation of the United States or to an energy crisis in Europe. The American economy is renowned for its resilience but, after a long period of expansion, economists are signalling concern on a number of fronts. In a recent edition of *Foreign Affairs*, former chairman of the US Council of Foreign Advisers, Dr. Martin Feldstein of Harvard, wrote about the dramatic decline in savings by American households in the past ten years — from approximately 7% of income in the 1990s to little or no savings now. The increase in the value of their homes and their stocks and shares made Americans feel wealthier, more willing to spend and less willing to save. Low interest rates encouraged people to take on second mortgages on their homes. Mortgage debt in the US increased by \$1 trillion in 2004 alone.

This US savings gap — the gap between savings and income — is being filled by imported money. Through an increasingly globalised financial system, Americans are essentially borrowing money from all over the world. This trend will

not continue. Dr. Feldstein believes Americans are already beginning to save again because they know the value of the shares they own will not double yet again in the next ten years, nor will their homes go on increasing in value at three or four times the rate of inflation in the next ten years as they did in the last ten. A resulting rapid rise in the US savings rate would mean Americans would begin importing less and, if associated with a fall in the dollar, exporting more.

The question is whether the slowdown in American imports will lead to a general slowdown in the world economy. I believe this will depend on how sudden is the turnaround and on whether and how it is adapted to politically, not just in America. German, French and Chinese savers will have to start spending a bit more than they spend currently. An increase in the value of the euro and the renminbi relative to the dollar would mean European and Asian consumers have more spending power. Will they have the confidence and optimism to use the spending power that an appreciation in their currencies would give them?

The bottom line is that everybody, not just Americans, will have to change. This is as much a psychological as a financial challenge. One of the great characteristics of America is optimism, a belief that dreams can be realised through personal effort. That optimism needs to spread to other countries, including those in continental Europe. It needs to become America's No. 1 export, so that the coming transition in the world economy can be successfully managed.

I would like to turn to a problem Ireland, Europe and the United States must face together: energy and climate change. Whatever about the short-term trends, I am convinced that oil prices will rise substantially over the next ten to 15 years, perhaps double. Not only that, our dependence on oil from the Middle East will increase, with all that implies for our relationship with all the countries in an arc stretching from Israel to Iran. We have the choice of anticipating these trends and trying to master them or of simply allowing them to overwhelm us.

I believe oil prices will rise in the medium term, although not perhaps in the short term, because China now consumes only two barrels of oil per year per person. Europeans consume 12 barrels each per year, and Americans consume 26 barrels per person per year. Over the next 15 years, the number of cars in China is expected to increase fivefold. Furthermore, 1.5 billion people in the world do not have electricity in their homes. What will happen to world energy demand when they are connected up and can switch on? What will that do to energy prices and global warming?

Climatologists agree that the world's weather is already changing. As the world becomes warmer, the sea level will rise. If, as some predict, global temperatures rise by 5° Fahrenheit in the next 100 years, that could mean an 80 ft. rise in

the sea level, which would put low-lying parts of Europe and major cities on the US east coast under water within the lifetimes of our grandchildren. Some 50 million US citizens live within 80 ft. of sea level, as do 250 million Chinese, 120 million Bangladeshis, and probably some Members of this House. I am surprised that property markets do not reflect that risk.

The biggest emitters of greenhouse gases in the world are the United States with 21%, followed by China with 15% and Europe with 14%. Europe is still far from perfect. Some individual European countries have already greatly exceeded their Kyoto emission targets, including one I will not name. Other countries that have congratulated themselves have taken credit for one-off gains, such as the closure of coal mines and heavy industry, which they cannot repeat.

We will manage to cut the rate of increase in greenhouse gases only if public opinion recognises that the problem is both serious and urgent, and is willing to make sacrifices to overcome it. A recently published world opinion survey by Pew Global Attitudes shows wide gaps between countries in how ordinary people view the seriousness of the climate change problem. While 66% of Japanese and 65% of Indians said they worry a great deal about climate change, only 20% of Chinese and 19% of Americans said they do so.

We need to replace the Kyoto Agreement with a regime to which every country in the world is committed. As we know, many countries have no commitments under the existing Kyoto Agreement. The new regime should be ambitious, but should also encourage genuine long-term investments by having a much longer timeframe than Kyoto. I do not buy the idea that we can deal with global warming by some yet-to-be-discovered technological wheeze, without some sacrifices in our short-term economic growth rate.

I will conclude my remarks by looking forward. What sort of world will we have in 2020? Of every 100 people in the world in 2020, about eight will be EU citizens, four will be Americans, 56 will be Asians and 30 will be Africans.

Asia is on the way back, economically speaking. I do not belong to those who find this alarming, unthinkable or surprising. After all, in 1800 — this House was already built at that time — three-fifths of the world's economic activity took place in Asia. By 1900, Asia's share had fallen to just one-fifth, and Europeans with 20% of the world's population, had 40% of its wealth. By 2000, Asians had come back to having two-fifths of the world's wealth. Europeans, meanwhile, had fallen to only 7% of the world's population, but still enjoyed 25% of its wealth. This balance has shifted back and forth over the centuries and will change again during the 21st century.

We must put ourselves in a position to manage these changes proactively. We must manage the perfectly natural re-emergence of Asia, to allow it to enjoy a fairer share of the world's income. We must help Africans to overcome the wars,

[His Excellency, Mr. John Bruton.]

chronic diseases, and the lack of basic infrastructure such as roads which are now holding them back. We must do all this without destroying the planet with an excess of greenhouse gas emissions. Membership of the EU puts Ireland in a position to have a say in the management of these global changes. It thus enhances our sovereignty.

These massive global tasks can only be tackled if nations are willing to trust one another. The task of diplomats — even newly recruited diplomats — is to build trust and on that basis to negotiate. Negotiations can only start when you empathise, even if you do not sympathise, with the other sides' fears, ambitions and insecurities. Empathy sometimes comes hard for big nations. They know their own story, are proud of their achievements, they know their model works for them, and wonder why they need to understand anyone else's model at all. However, if a region comprises only 7% of the world's population, as in the case of Europe, or 5%, as in the case of America, it is necessary to understand the way other peoples look at things. The European Union, as a construction of 27 nations, making compromises in the world's only multinational democracy, can build a structure of peace for the world in the 21st century.

I am a deep believer in the European Union because just as it has done for Ireland, it has also lifted the sights of other nations from their quarrels with their neighbours, and built a system and a habit of resolution of disputes. The European Union has enabled people to see that each one of us has several identities, of which the national identity may be the most important, but is far from being the only one. The European Union has enabled the people of all 27 nations to be, and to feel, at home everywhere within its boundaries. That feeling of being at home everywhere in the Union gives us all a psychological sense of security that is an antidote to atavism, sectarianism and fear of people who are different from us. I believe that the psychological benefits of the European Union are more important even than the material benefits we have derived from the Single Market, the single currency and the global clout of the Union as an economic player.

The enlargement of the European Union to bring in 12 new countries in four short years is truly remarkable. It is almost as if the 50 states of the United States had merged with the 32 states of Mexico, giving every Mexican the right to work anywhere they wished in the US and *vice versa*, and adding 64 Mexican senators to the 100-member US Senate on Capitol Hill. That is what we have done in the European Union. We have undertaken an equivalent project, with the conference of equivalent rights. We should not be surprised that such a revolutionary change has created anxiety in some quarters. We should celebrate it for the remarkable achievement it is.

This enlargement is a geostrategic project for the security of every European. Stabilizing cen-

tral Europe makes every European safer than they would be otherwise. This enlarged Europe must rest on something more than a technocratic base created by 80,000 pages of common legislation and treaties. If it is to exist at the end of the 21st century, as I believe it will, the European Union must become more efficient. That may mean a smaller Commission, more majority votes and fewer vetoes. Beyond that, it must develop the political capacity to seek sacrifices from its citizens and member states whenever that is essential. A Union of rights and responsibilities must be a fully democratic Union. Elites cannot ask others to make sacrifices. Only those who have been directly elected by the people can legitimately ask for sacrifices from the people.

If the European Union is to be strong enough for the challenge of the 21st century it must be able to attract patriotism, loyalty or affection from all EU citizens in the same way each member state will continue to attract patriotism, loyalty and affection from its citizens. Patriotism, loyalty and affection do not arise spontaneously. Rhetoric alone will not create them, nor will constitutions or abstract declarations on their own. People will give loyalty and affection only to something they have had a part in creating. People give loyalty to people, not to abstractions.

I have long advocated the idea that the President of the European Commission should no longer be selected in a private negotiation between Heads of Government but should be elected by the people of all member states on the basis of equal suffrage. A large democratic idea of this kind is now needed to energise the European Union.

**Ms O'Rourke:** On behalf of the Seanad I welcome Ambassador Bruton to the House. His sense of curiosity and optimism are hugely engaging characteristics that have always imbued his work in this country, in Europe and now on a wider scale. I invite Senator Ormonde, our representative on the Joint Committee on European Affairs, to pose a question.

**Ms Ormonde:** I welcome the Ambassador and thank him for an informed address. He considered the matters of EU membership, enlargement, and the relationship between the EU and the US. I was interested in his vision of 2020. I intend to read his script again as it provided much to consider in respect of the statistics provided on world population. In 2020, only eight of every 100 people in the world will be European citizens, with 56 being Asian and 30 being African. This will have a major impact on the future of energy and global thinking. Does Mr. Bruton envisage the swing to the Democrats in the US mid-term elections having any implications for the relationship between the European Union and the United States?

Are the European Union and the United States at odds on foreign policy in respect of Iraq and the Lebanon?

**Ambassador Bruton:** I am not certain what the final tally will be in the US House of Representatives and Senate races. The Senate has more influence on foreign affairs because it must sanction all treaties the United States makes. The House, however, has more influence on finance and taxation, similar to the Lower House in the Oireachtas. There is a concern that the Democrats might be more protectionist because they represent many of the unionised workforces of plants which fear the outsourcing of their work to other parts of the world. That would make it more difficult for the US President to get the trade promotion authority he needs to negotiate treaties without those treaties being subject to detailed amendment. That in turn would make international negotiations impossible.

I do not, however, share that view. I have talked to Republicans and many leading Democrats and while, like any opposition party, the Democrats will use whatever any argument they can to create difficulty for the Government of the day, faced with the choice of moving America towards protectionism or outwards to the world, they would be willing to engage in adequate trade negotiation and give their President authority to do so. The Democrats may lay greater emphasis than the Republicans on respect for International Labour Organisation standards in trade negotiations which may complicate the mandate of the World Trade Organisation. There are other changes a Democrat majority might effect but trade is the most important one with which I can deal.

In regard to Iraq, I may engage in political punditry and speculation, which I am neither paid nor authorised to do, but I have never been unduly worried about.

**Mr. Coghlan:** Mr. Bruton should not let that stop him.

**Ambassador Bruton:** I doubt the swing to the Democrats will make a great short-term difference. The dilemma facing America and the world is not whether what happened in 2003 was right or wrong. People have their own views on that dilemma but 2003 is history just as 1803 is history and one cannot change what has already happened. Americans face the reality of serious strife in Iraq and a responsibility that, rightly or wrongly, they have taken on and from which they cannot walk away. They also face a concern that Iraq would make the necessary transition to being a pluralist, functioning, rule of law based, and secure democracy.

We share that concern, because it is in the interests of the rest of the world, whatever position one might have taken on the war, and many European countries supported and many others

opposed it. People will not walk away from that but a different approach may be necessary. Rather than trying to solve the problems of Iraq in isolation one may have to consider how Iran could be brought in to help stabilise Iraq, while resolving some of the outstanding issues with Iran. Another option is to examine how Syria might be brought in to help resolve the problems in Iraq. This would allow a resolution to some of the problems that exist with Syria such as the Golan Heights, Israel and the Palestinians who are enclosed in the West Bank and Gaza. It is possible to envisage an opportunity of a range of interlinked settlements that could bring about a benign outcome across the region. Rather than looking at it as an arc of insecurity or difficulty, it should be seen as an arc of opportunity to build, through clever diplomacy, a structure of peace based on respect for everyone's concerns. In conflict situations, respect is what people need most. With the Baker report to be published shortly, that is an opportunity that could be ceased upon by the Republican Administration and Congress.

**Mr. B. Hayes:** On behalf of my colleagues in the Fine Gael Party, I thank the ambassador, Mr. Bruton, for his remarks. I also thank him for subjecting himself to the inquisition that will follow from my colleagues on all sides of the House. It is good to hear him express his views so forcefully. Last Christmas, I read the memoirs of the former British ambassador to America which became an international best-seller. It was a diplomatic kiss-and-tell. I advise Mr. Bruton not to go down that route when he chooses to tell his story.

**Mr. Bradford:** That would be telling.

**Mr. Leyden:** He might tell too much.

**Mr. B. Hayes:** The EU and America have historical, cultural and trade ties. To have an Irishman representing the 25 member states, and their 450 million people, is a great source of pride to our country and to the Parliament. Mr. Bruton gave all his adult life, 35 years, to politics before he went into the diplomatic sphere. He brings a great clarity to this position that sometimes diplomats do not have.

**Mr. Bradford:** I welcome Mr. Bruton back to Leinster House and I thank him for his interesting contribution. He spoke of conversations across America which I am sure will be the title of his next diary. Mr. Bruton spoke of the European Union giving us a psychological sense of security. The US has had this sense of security for three generations, largely due to its geographical and political isolation. I recall Mr. Bruton's former government colleague, Mr. Peter Barry, speaking on many occasions of the little travel done outside of the US by American citi-

[Mr. Bradford.]

zens. Many of them do not hold passports and their world is just America.

Yesterday saw an important election in the US. Most EU commentators spoke of how the war in Iraq would impact on how America voted. The early indications from exit polls, if one can take them as a bearing of any real news, was that the war in Iraq was not the main issue so much as domestic concerns such as the strength of American economy. A recent meeting of the Oireachtas Committee on European Affairs was addressed by a delegation of EU trade representatives to the United States. They too provided statistics pointing to the major economic interdependence between Europe and the United States. Does Mr. Bruton believe there is full political recognition on both sides of the Atlantic of how truly dependent we are on each other?

The ambassador, Mr. Bruton, said he is aware of the warmth that still exists in the United States towards Ireland. One presumes and hopes there is similar warmth of feeling towards Europe. The regrettable reality, however, is that in the last decade, not only in Ireland but throughout Europe, there is increasing evidence of anti-United States sentiment. Does the ambassador believe there is a growing recognition in the United States of this new wave of feeling? There are reasons for this sentiment, some of which are justifiable and others not. Is this becoming an issue for the people Mr. Bruton meets? United States citizens are not stupid; they recognise this uncomfortable wave of antipathy. How will this affect the attitude of the United States and its political leadership to Europe?

My final question relates to climate change, global warming and energy policy. I read a report some weeks ago in the *Irish Farmers' Journal*, a newspaper with which the ambassador, Mr. Bruton, has a strong association, on a major conference on alternative energy that took place recently in the United States. The significance of this from a political perspective was indicated by the address of President Bush to the conference. It seems genuine progress is being made in the United States towards alternative energy systems, especially those that link strongly with agriculture. Does Mr. Bruton believe this level of progress is making a significant difference? Is there much that we in Europe can learn from it?

**Ambassador Bruton:** I will answer Senator Bradford's final question first. There is significant interest in the United States in alternative energy. Of particular interest is ethanol production, which is the production of energy from either corn or sugar cane. The latter is far more efficient as a producer of energy. There is an argument that when one factors in the nitrogenous fertiliser, diesel and so on that must be used for sowing, harvesting and transporting, the net benefit of corn-based ethanol is quite small in terms of the

overall energy balance. However, there is major interest in it in the corn belt where farmers are pleased, like farmers everywhere, to discover an alternative market for their product.

If all the United States' energy needs are to be produced from ethanol, however, there is probably a requirement for a doubling of the current scale of agricultural land. This is not an option because land is no longer being turned over to agriculture. There is, therefore, a fundamental problem. I believe ethanol will become a part of the energy scene, an element that will expand or contract depending on markets elsewhere. I do not believe, however, it will become the staple energy source for the United States. Unlike Europe, the United States has huge reserves of coal, but it does not yet have the operational technologies for using that coal in a way that does not generate large amounts of greenhouse gases. There will be difficulties in this regard until it masters techniques of carbon sequestration, which involves putting the carbon back into the earth, or some types of clean coal technologies.

The other issue Deputy Bradford mentioned is one that is profoundly worrying. It is fair to say that people in the United States are much more favourable to Europe and the European Union than are Europeans to the United States. This is what public opinion surveys show and it is regrettable. Europeans often look to the United States as younger brothers look at their older sibling, as an entity which enjoys some advantages and has stolen a march on oneself. Obviously, the United States is an older democracy than most European ones, so we tend to be a bit critical as the young tend to be. We do not give credit to the fact that fundamentally our values and their values are the same. We have different ways of expressing them and different ways of applying them but there is a fundamental congruence in our value systems.

Europeans need to face up to the dilemmas America must face and ask themselves what would they do differently if they were in America's position and how would they guarantee their success in dealing with a problem such as nuclear proliferation which the United States is now taking responsibility for dealing with. Perhaps at the margins we would do some things differently but, fundamentally, we would still have to face the same problems. Just as we criticise Americans for not trying to understand the way other people look at things — perhaps with some justification — we should make a greater effort to understand the way they look at things. If we did so, perhaps some of that difference expressed in the polls would dissipate.

A recent opinion survey done by an outfit called Public Agenda on attitudes to foreign policy in American public opinion showed that Americans are highly self-critical. All the criticisms we might tend to make of American foreign policy are being made by Americans, even by those who strongly support the current administration. Affirmative debate takes place in the

United States all the time. We should not see it as a sort of uniform, amorphous mass of opinion. There is terrific debate within the United States as there is here about all these choices.

**Mr. O'Toole:** On behalf of the Independent group, I welcome the ambassador, Mr. Bruton, and thank him for his wide-ranging speech which covered many areas. On a personal level, I thank him for focusing on the issue of global warming and the Kyoto Agreement. I have been struggling for the past two years in this House to get people to respond with some passion to that issue, including a fortnight ago. I thank him, in particular, for giving a very graphic image for which I had been struggling until now.

The ambassador said global warming of five degrees will raise water levels by 80 ft. but he wondered why the property market in Dublin, or generally, does not take any interest in that. What it will mean for this city is that there will be water from Rathmines to Drumcondra at the very least. In fact, the headquarters of the ambassador's former great nemesis, the Taoiseach, at St. Luke's in Drumcondra, will be under water by the time his prospective grandchild is a grandparent. It is a vision to conjure up and it might gain some reaction from the property market and the political leadership in this city.

I thank the ambassador and ask my colleague, Senator Ross, to address him politely with some interesting questions.

**Mr. Coghlan:** He will do his best.

**Mr. Ross:** It will be a change not to have hot air coming out of Drumcondra anyway.

I join in the thanks to Ambassador Bruton for coming to the House. He made one of the clearest speeches I have heard from the seat in which he sits. The message was also clear. It was flattering to this House to be read a thesis which was obviously written and understood by its author and I congratulate the ambassador on what he had to say to us.

I wish to ask the ambassador two questions, to the first of which I do not expect him to respond. In light of the eulogies paid to him in the House today, how does he think he escaped the pages of *Who's Who in Ireland* in the past few weeks? It is extraordinary for us to be in such distinguished company but not to see him feature in that book. It is an amazing omission but I will forgive the ambassador for ignoring the question.

My second question is more serious. I was struck by the dual interest the ambassador obviously has in Europe and America, as well as the manner in which he attacked the subject from both angles. Specifically, I wish to question him on the first part of his speech, when he spoke rather unapologetically about American investment in Ireland. It is somewhat difficult for Members to listen to the fact that so much is owed to American investment. That was very

interesting and the staggering statistics provided by Mr. Bruton tell Members much about the reason the Celtic tiger has taken off.

I do not wish to ask the ambassador about the implications for that investment of the elections as it is too early to tell. Moreover, he touched on the subject when discussing protectionism there. Is a mood developing in America at present that is far more sceptical about investing in Ireland? Are the good days of multinationals coming to invest in Ireland over or at least slowing?

I will quote statistics with which the ambassador may not be familiar. He might comment on an alarming survey that was taken here by the American Chamber of Commerce Ireland in June or July 2006. It found that 43% of those American firms surveyed indicated that Ireland was no longer a preferred location for further investment, while 41% of them indicated that Ireland is no longer as attractive a location for investment as when such companies first set up here. As this sounds the warning bells, what can be done about it? The reasons provided were also fairly clear and singled out specific problems in Ireland that are scaring off and annoying Americans.

This submission is representative of firms such as Intel, Dell and those other organisations that are needed so badly and to which we are grateful. One obvious problem to be singled out concerned infrastructure. The survey stated that Ireland was not within striking distance of airports where it was necessary and the roads were not good enough. It also singled out broadband provision by stating it was appallingly bad, as well as other areas such as labour availability and costs, in which Ireland was falling far behind its competitors. In his discussions with American Members of Congress and Senators — and the newly-elected Members — has the ambassador detected any reluctance, such as that which obviously is conveyed by this survey, to come to Ireland with the same enthusiasm as previously?

Finally, I refer to a political question on a related subject. Obviously, there has been a certain amount of controversy within both parties on the issue of transfer pricing, whereby  
12 o'clock Ireland takes great advantage of the willingness of American companies to keep their profits or to have their profits taxed here. The issue has been raised recently in *The Wall Street Journal*. Is there an indication that any United States Administration might wish to put an end to this practice, thereby causing real difficulties for multinationals located here?

**Ambassador Bruton:** I must appeal to the Cathaoirleach to protect me from being drawn into politics, which I have been avoiding for the past two years. It is important to recognise that Ireland has 1% of the European population. However, in 1997 — to pluck a year from the air — it received 15% of all American investment coming into Europe. It is impossible to maintain

[Ambassador Bruton.]

such a rate forever because costs are naturally rising. This is inevitable because as demand increases, so do costs. However, the latest figures I have seen show that even in 2004, Ireland received 5% of all American investment coming into Europe, which constitutes a very good performance. Obviously, this share will come under increasing pressure. While some reasons for this were mentioned by the Senator, another reason is that when we began to attract American investment, large areas of the world were closed to it. These areas are now open. China, India and Russia are all open to US investment. Countries which were not competing with us at all 15 years ago are now competing directly with us. This will clearly have an effect. If I were to make a comment about domestic politics, which I will not do, I would say that the crucial factor for us as Irish people is to use the savings we have for productive investment to ensure our savings are used to create employment for our children and grandchildren, directly or indirectly. This will create recurring wealth rather than one-off asset improvement.

How does one structure an incentive system to ensure that instead of putting his or her savings in a house in Spain, a person puts them in a business that will create employment somewhere in Ireland? How does one make such an option more attractive? The idea that we can go on importing capital and ideas from outside the country forever is not viable. We have benefited enormously from it in the past but we are now reaching the point in Ireland where we must find ways of using our resources more productively. This was what I attempted to say in my speech without getting into any problems with the Cathaoirleach.

**Mr. McDowell:** I join others in welcoming the ambassador, Mr. Bruton, to the House. It is an advantage of this House that it can occasionally take time for these kinds of reflective discussions and I thank Mr. Bruton for taking time out to facilitate us.

I was struck by his comments about the current account deficit in the US and the scenario that might flow from it. He knows as well as I do that the particular scenario set out by him has been predicted by economists for some time but has not happened yet. Is there a real danger to the EU, especially the fledgling recovery in countries like Germany, if the scenario spelled out by him, which would result in an appreciation of the euro against the dollar, came about? In that context, are we not in real difficulty and should we perhaps not give more thought to the policy of increasing interest rates at the current pace within the eurozone? There is a real danger in a combination of the scenario spelled out by Mr. Bruton and the European Central Bank's policy of increasing interest rates at its current pace.

My second question concerns Africa. We sometimes get very mixed signals from the Bush Administration in respect of Africa. On one hand, one gets the impression that because Africa has little strategic interest for the US, the Bush Administration is not engaged. On the other hand, President Bush can attend a G8 summit, as he did in Edinburgh, and sign up to what looks, on the face of it, to be an extraordinary commitment in terms of resources on the part of the US. This is one of those areas where joint action between the EU and the US is vital if there is to be a serious impact locally in Africa. I am interested in hearing the ambassador's thoughts on the reality of the commitment of the US in this regard.

**Ambassador Bruton:** There is a danger to the recovery of the economies of continental Europe from a rapid appreciation in the euro relative to the dollar. However, it is important to say that the asset values in Europe are very strong. The average household in terms of asset values in Italy is wealthier in net terms than the average household in the US, which is quite surprising. They have scope to spend if they have the confidence to do so.

Obviously, I am not privy to the thinking of the European Central Bank but to the extent that it has raised interest rates, it has more scope to reduce them. If there were to be any rapid change in the position as a result of a too rapid increase in US savings, a too rapid decline in the dollar or both, the European Central Bank then has more scope to cut rates from its current level than it would have if it had kept the rates at a very low level. This is the kind of thing that central bankers do. I do not know much more than this but I think they would make this sort of calculation.

In respect of Africa, it is important to state that no US Administration has made larger commitments to aid to Africa than the current Bush Administration. The level of assistance and expenditure by the US Administration on the AIDS issue and aid to Africa in general has been far higher in the last five or six years than it was previously. I am aware that this is quite different from the caricature but it is the reality. This is not to say that enough is being done because US aid in general, as a proportion of US gross domestic product, GDP, is far lower than European aid as a proportion of European countries' GDP. However, one should acknowledge that a very substantial effort has been made as far as Africa is concerned.

I am not as familiar with Africa as I am sure many Members of this House are. One aspect of Africa which stuck in my mind was the fact that it costs more to transport a product from the interior of Tanzania to the port at Dar es Salaam than it does to transport that product from Dar es Salaam to New York. The problem of internal infrastructure in Africa is awful, as are the problems of roads and the disruption caused to trans-

port by war. Africa must be allowed or encouraged to redress these problems.

**Mr. Dardis:** I join the Cathaoirleach and others in welcoming the ambassador, Mr. Bruton, to the House and in thanking him for honouring us with his presence here today. I also echo the words of the Cathaoirleach with regard to the ambassador and his contribution. We received the kind of intellectual power within an address which we have come to expect from Mr. Bruton. This intellectual power has characterised his entire career.

He made a very important point with regard to the psychological benefits to this country of EU membership, with which I very much agree. In many ways, the psychological effect on the country has been far more profound than the economic effect, even though that has been profound.

I have a number of questions for the ambassador, the first of which concerns the question of enlargement and the appetite for it. I agree with him about how successful the last enlargement was and how it was achieved so rapidly and smoothly, to many people's surprise. I wish to focus in particular on enlargement in respect of Turkey and the Balkan states. The appetite for enlargement seems to be waning. The ambassador probably expected the difficult question about Turkey.

Those of us who are members of the Oireachtas Committee on European Affairs and who visited Turkey were struck by the fact that at administrative or official level, efforts were certainly being made to converge with European from a human rights and legislative perspective but that there was still a long way to go. How can we have a situation where a state wishes to join the EU but refuses to recognise a member state? I do not see how this is possible. Could Ambassador Bruton give us his views on the matter?

The other matter concerns the Balkan states. Countries like Montenegro appear to be very suitable applicants for EU membership. Is the appetite for enlargement waning? I believe it is among populations and the electorate but is it waning at Commission and official level?

In respect of inward investment, we should not underestimate the value of being an English-speaking democracy with all that this entails and the fact that we have been such a stable democracy. The challenge for us now is productivity and competitiveness. Mr. Bruton spoke about the contribution we must make and our rights and responsibilities, which is another matter related to EU enlargement. Does this inevitably mean or should it mean that we must participate in the defence of the EU? Can we derive the benefits, as we have done, and continue to be a member of the club without participating in its defence? Is this a very convenient place to be? Is sitting on the fence an Irish solution to an Irish problem?

I have a further question, which is similar to Senator Ross's question regarding *Who's Who in Ireland* and similar in style to the last question

raised on the "Questions & Answers" programme. Does Mr. Bruton consider it is desirable for retired politicians to be part of our diplomatic service?

**Ms O'Rourke:** Yes.

**Mr. B. Hayes:** Yes.

**Ambassador Bruton:** I think so, yes. I would like to give a slightly serious answer to that question. The training one gets in politics is apt to the diplomatic world. The ability one must acquire to simplify complicated issues and to sit in on long meetings where one may be not entirely enthralled by the proceedings but at which one needs to be attentive and make a useful contribution are skills that are vital in diplomacy. Another skill is the ability to get on with people. Everyone in this House has been selected to be here because they have these skills. Used sparingly, that is a facility of which the Irish State perhaps ought to make use. That suggestion would not be welcomed in certain quarters but it is a valid enough point.

If Senator Dardis does not mind, I do not consider I should deal with the issue of defence. It is an issue on which I know the parties in this House have different opinions. Members probably know my opinion from my previous pronouncements on the subject, therefore, I will leave it at that if I may.

I will, however, deal with the other issue raised regarding enlargement. We should not be neurotic in Europe about the fact that we have some difficulties with the rapid pace of enlargement that has occurred. As I said in my speech, it is as if Mexico and the United States had been merged in terms of what we have done in the past ten years in Europe. It is bound to have resulted in the creation of some internal friction. We should bear in mind that the United States tore itself apart in the period from 1861 to 1865 in part because of arguments about enlargement, about states being brought in, on what terms they might be brought in and which state should be preferred, whether it should be a free-soil state or a state that allowed servitude.

Enlargement is not easy for anybody. It was not easy for the United States in the 19th century and it will not necessarily be easy for the European Union in the 21st century. People should recognise the difficulty of it and the huge achievement that has been made. However, I accept that it is not possible at the end of the negotiation process to be in a position where an acceding country does not recognise an existing member. I believe it is accepted on all sides that this is an issue that will have to be resolved before the negotiation with Turkey is concluded, but I understand it is not an obstacle to the negotiation at this stage. What is an obstacle, however, are issues related to internal human rights in Turkey.

[Ambassador Bruton.]

It is important that people should understand that one of the reasons so many countries from Moldova to Georgia to Kazakhstan want to be considered as possibly eligible to join the European Union is because the Union has such exacting standards on human rights and democracy. If we did not have those standards and could not give that seal of approval to a country by accepting it as a candidate, the European Union would not be what it is. It is important that we stand by those standards. We should not have given accession dates to countries separate from adherence to those criteria. Mistakes were made in saying to countries X and Y that they will join by this year or that year regardless. That took the pressure off those countries, but we must keep the pressure on all the time.

That said, it is vital that the Balkans and Turkey have the prospect of joining the European Union. It is vital for the stability of the Balkans, as the states in the region have a very difficult task, particularly in Kosovo in building a state from nothing and similarly in Montenegro in building a new state. The European Union has shown that it has a capacity as a contributor to state building. We must find a way of continuing to keep those accession processes moving forward, perhaps not all at the same pace or as fast as they may be some of the time but moving forward just the same.

I hope that a solution to the difficulties to which Senator Dardis made reference in regard to Turkey, which are real, will be found by the Turkish leadership and by the leadership of EU member states. Commissioner Olli Rehn who is dealing with this subject is a determined man. He comes from Finland, which has not been a member state of the European Union for long. Finland borders Russia and the Commissioner understands the importance of enlargement. The House ought to have and can have great confidence in the way he will handle this issue, as will the member state Governments.

**Dr. M. Hayes:** It is a great privilege to join in the welcome extended to the ambassador, Mr. Bruton. The warmth of the welcome is an expression of appreciation of the work he has done throughout his life in regard to Europe and elsewhere. He should not worry about not being in *Who's Who in Ireland*. I regard the omission as another indicator of his great distinction.

I was interested in Mr. Bruton's reply to a point raised, perhaps slightly flippantly, by Senator Norris. It is refreshing that we should hear these matters in language which we understand. It was an inspired appointment of the European Union to send a politician such as Mr. Bruton to Washington. While I have the highest regard for our diplomatic service and for diplomats generally, one of the problems in Europe was that diplomats regarded this as something that they talked about between themselves and did not bring the poli-

ticians into it and that is the reason we now have the difficulty of engaging the people of Europe. I was interested in Mr. Bruton's proposal of an elected President, which he has advocated in other places.

I wish to ask two questions, one of which concerns the way Mr. Bruton does his work. He is representing Europe and European countries have their own ambassadors in America. Some of them believe they have a special relationship with America, some believe it is a specially good relationship while others take some pride in having a specially bad relationship. Does that complicate life for Mr. Bruton and how does he manage that transition?

My other question concerns the extent to which, if it is true, that the Americans think of the European Union as NATO at play. Does that create a difficulty? It creates difficulties in Ireland where we do not want Europe to be seen as NATO. It is a question of the interaction between American expectations regarding what one might call the military-security front and the political front.

**Ambassador Bruton:** I assume the omission from *Who's Who in Ireland* was a marketing ploy in order that people would talk about such an egregious omission and thereby talk about the publication in question. I am sure every time that is mentioned it boosts sales.

It is the case that Americans see the European Union and NATO as twins, not identical twins but twins with similar purposes. The United States is a member of NATO, it is not a member of the European Union, but it regards NATO as the European element for defence. It tends to worry if the European Union decides that it wants to develop its own military capacity under EU aegis independent of NATO.

The American insight is that one cannot distinguish and separate power from military power. Military power is part of the reason for the strength of the dollar. There is a certain honesty about the American approach to these matters, which perhaps we Europeans tend to shy away from, with some believing that we never needed the military umbrella that the Americans provided, thereby simply ignoring it because there is no language for describing it. This is an issue which not only Europeans in Ireland but Europeans elsewhere need to consider. There is a salience to military security. It is not as important as it was 15 years ago because the new threats are not conventional but it is important nonetheless.

As far as ambassadors, special relationships and so forth are concerned, one of the things I was partially led to believe I would find when I went to the United States two years ago was that there would be a type of rivalry between member state ambassadors similar to the type of rivalry that may exist between Departments here. I have not once found a trace of it in all of that period. I suppose it is partly because the United States is

so big and that there is so much work for all of us to do that we do not tend to cross one another's paths.

Whenever an issue needs a common approach from the member states and the Commission, there is a ready willingness on the part of the member states, large and small, whether it be Ireland's ambassador, Mr. Noel Fahey, Sir David Manning representing the United Kingdom or Mr. Jean-David Levitte representing France, to put on the European Union jersey, so to speak. In the United States, the British Presidency of the European Union was exceptionally good. Its ability to work with the Commission was second to none in terms of promoting Europe in the United States.

**Mr. Finucane:** I wish to ask the ambassador a question regarding the Kyoto Protocol. He indicated that America is responsible for 21% of emissions. There is a feeling here that Ireland contributes only a thimbleful of emissions in contrast to countries like America. He also stated that a survey revealed 19% of Americans worried a great deal about emission standards. That is a surprise in the context of the graphic images we see on television of the effects of climate change and what is happening in the Arctic and the Antarctic. To what degree does the ambassador think Americans will change their attitude to the Kyoto Protocol? Currently, the view is that they do not take it seriously and that President Bush has never taken it seriously.

**Ambassador Bruton:** I think a change is taking place in American public opinion. The figures I quoted were probably taken before "An Inconvenient Truth" appeared and the recent spike in oil prices. Those figures may be out of date as American opinion is changing. In his state of the union address, President Bush famously referred to the fact that the United States was addicted to oil. That is the beginning of something that may represent a change in opinion there.

If I were to identify two issues on which the Administration might be able to work with the new Congress, the first would be citizenship and immigration, as President Bush's views are almost identical to those of the Democrats rather than the majority of the Republicans. He may find it easier to get naturalisation arrangements for undocumented immigrants through working with the Democrats than with the old majority. That could be good news for some Irish people. The second issue is possibly climate change and energy security. The Democrats will want to show they can work with the White House on certain issues for the good of their future but, equally, the Administration will want to show, for the purpose of President Bush's legacy, that it can work constructively on certain issues. It is possible the next two years could be a most productive period in terms of climate change, which Senator Finucane mentioned, immigration and possibly

even other issues. Some problems will be difficult for them to deal with, for example, health care is a significant issue in the United States. The President attempted to deal with social security reform but had to abandon it due to lack of support. I do not think either of those issues will be resolved in the next two years but progress is possible on the issue to which Senator Finucane referred.

**Mr. Lydon:** Like everybody else, I welcome the ambassador. As he said, we might have had disputes in the past at home but when people get out on the world stage they are one of our own. It is great we have people like the ambassador and Mr. Peter Sutherland, who is chairman of the Trilateral Commission, who will never forget where they come from.

I was interested in the ambassador's comment on Turkey. He said Europe should not be afraid or neurotic about allowing Turkey to apply for membership of the EU.

**Ambassador Bruton:** I will clarify that in a moment.

**Mr. Lydon:** What is the ambassador's view? Many people would say Turkey is geographically not part of Europe. Is there a limit to the amount of expansion we can undertake? Do we move on from here to Georgia, the Ukraine, Belorussia and Kazakhstan? What will happen if Russia applies? There must be a limit to the level of expansion we undertake. Does the ambassador have a view on that?

**Ambassador Bruton:** What I said is that we should not be neurotic about the fact that we have difficulty with enlargement. Neither should we be neurotic about the fact that public opinion in some European countries is hostile to further enlargement. It is perfectly understandable that such sentiments would arise. That does not mean they are right but it is understandable and we should not allow other people to criticise us because, having undertaken such an enormous project, we are slightly tired before we make the next step forward. Part of Turkey is geographically in Europe — Eastern Thrace. For years we have said to Turkey that it is potentially a candidate to join the European Union. We may have said it without complete internal acceptance or thinking it would never happen, but we did say it and that is a prospect we must face.

I believe it also will be an issue for Turkey. It is a country with a sense of separate nationality that is much stronger than most European countries which see themselves as separate nations but also as part of Europe and are prepared to accept being outvoted by a majority of Europeans — not with great grace but they will accept it. I do not know if Turks would be willing to see Turkey outvoted on anything by a majority in Europe. They will have to change some of the ways they view

[Ambassador Bruton.]

the role of Turkey in Europe for them to be prepared to make the decision.

Significant debates will also have to take place in Europe and, as Members are aware, the French constitution has been altered to the effect that there must be a referendum on every enlargement beyond Croatia. That will apply equally to the Balkans and Turkey. We can look forward to a strong debate in that regard. At this stage I do not believe we should set any geographic limit to the enlargement of the EU, other than that a country must be part of Europe, because it is impossible for one generation to know how a future generation might perceive a problem. If one had asked people to set the boundaries of Europe 30 years ago they would probably have given a different answer to the one people would give now or might give 30 years from now. We should not write into the constitution a limit or anything of that nature.

I indirectly represented this House in the Convention on the Future of Europe which drew up the constitution. If an enlarged Europe is to work there must be more majority voting. The idea that we can have vetoes on all sorts of things is not viable with a Union of 27 or 28 members. Nothing would happen if everybody had a veto. The US Senate could not operate if everybody had a veto. The United Nations is not as effective as it should be because it has too many vetoes. It is so difficult to get world trade deals through because everybody has a veto. If we want to have effective international co-operation we must accept qualified majority votes, such as two-thirds majorities or four-fifths majorities, but not complete unanimity.

One of the criticisms I might make of the constitution is it does not provide enough variable types of majority. It has one type of majority or unanimity. On certain issues, more than 66% of voting strength majority but not unanimity may be appropriate. A little creativity could be applied.

Ireland must consider the size of the Commission. The Irish Government Cabinet comprises 15 members and that is as big a group of people that can be managed cohesively. It is being done so more than adequately at present. A Commission of 27 will prove difficult. However, every State must be treated equally. One cannot treat Malta differently to France in principle.

How can those two concepts be merged? Perhaps we should have one section of ten Commissioners selected in equal rotation among member states along with three or four others selected by the President from countries not represented in the rotation. That might enable bigger and smaller states to blend on a basis acceptable to everybody. Creative thinking is required to ensure the EU continues to be decisive in the face of difficulties.

It is also important to state politics is an inherently messy business. Political decision-mak-

ing always takes longer than it should. Efficiency is not consistent with pure democracy. It is good to reach a decision. We should not become purists.

**Ms Terry:** I also thank the ambassador for coming before the House today, giving us an excellent overview of his work and the state of the world as he sees it and giving so generously of his time. Will the ambassador tell the House whether the European Union is making any progress in influencing the US to move away from the use of the death penalty?

**Ambassador Bruton:** One of my tasks is to make *démarches* on behalf of the European Union in opposition to the death penalty. The European Union is entirely opposed to the death penalty. It believes it is a barbarous way to deal with criminal activity and is ineffective. It is important to state a majority of states in the US do not use the death penalty. Only a small number of states do so. Among those, a smaller number again use it frequently. The *démarches* are made to individual states.

Greater confidence exists in the efficacy of punishment as a deterrent in the US than it does here. Sentences are far longer there and the level of incarceration is approximately six times that in Ireland as a proportion of population. It comes from a certain Old Testament view about punishment which has little resonance, if any, in this country. I would love to see less emphasis on punishment and retribution in the criminal justice system in the United States. We have nothing to learn on this side of the Atlantic not only in respect of the death penalty but also in respect of retribution as a governing principle. I could elaborate but I will not.

**Mr. Mooney:** Does the ambassador's mandate extend to the relationship between the European Union, the United States and the Middle East, specifically Israel? A lack of consistency exists in foreign policy attitudes towards Israel because of diverging views. The US has an extremely consistent view. What is the ambassador's role in this?

The ambassador mentioned the United Nations although he did not touch on it too much in his excellent speech. The ambassador can take it as read I echo the welcome extended to him. Supporting the United Nations is a core principle of Ireland's foreign policy. However, as the ambassador pointed out deep flaws exist in the system. Does the ambassador have a role in this regard? Does he see a permanent future for the United Nations or will it go the way of the League of Nations, particularly as the US takes a dismissive view and only uses and manipulates it when it suits its foreign policy?

Does the ambassador have any influence in the context of the results of the recent election in the US whereby the House of Representatives has had a change of leadership? It was a blocking

mechanism for immigration reform laws. The ambassador and I met on a number of occasions to discuss this matter and I know he has a personal interest in the undocumented Irish. Does his mandate extend to the possibility of influencing the US towards providing more green cards for the undocumented Irish?

**Ambassador Bruton:** As I stated in response to a different question from Senator Finucane, an opportunity may have arisen to act on immigration. President Bush is anxious to regularise the situation of many Latin-American and Mexican immigrants, particularly in Texas, who want to become citizens. This may be of help to other undocumented groups, such as the Irish. A great deal of work remains to be done. It is not an issue in which I am directly involved. The Irish ambassador, Noel Fahey, is the “go to man” as they say in the US on this subject. Phrases such as “go to guy” and “heads up” are used.

Like every country, the United States has an ambiguous attitude toward the United Nations. When the United Nations supports what one does, one is all for it but it is different when it takes another view. In general, the United States is a supporter of the UN. It has paid its dues in recent times. I believe the US Administration considers it owes it to the UN to state what it honestly believes, even if some members do not want to hear those views. However, room for improvement exists.

The Middle East peace process is the largest problem facing the world in political terms. Apart from the relationship between the United States and Israel, it causes difficulty to other relationships in that part of the world, such as the relationship between the western world and the former Ottoman empire. In this country in particular, people have an attachment to land and one can state one’s grandfather owned a particular piece of land 150 years ago but does not own it now. People here have an understanding of the feelings of many Palestinians about what happened to them or what they did in 1948, depending on one’s version of history. It is important this is understood. It is obviously not possible for everybody to return to where they came from but there is a need to have a clear boundary and a recognition of people’s sense of having lost something, and to provide some form of recompense. The solution to the conflict is clear to everybody. It was set out at Taba, Camp David and elsewhere. It is simply a question of assembling the political will to achieve it, which is where leadership from outside is probably crucial.

It is important to note that the first US President to recognise that the Palestinians have a right to a state of their own is President George W. Bush. One might say he could have gone further than he has in following up this but he is the first President to have recognised it. I draw some sustenance from that.

It is a very important issue. It is the key to the range of other issues to which I referred in what I called this arc of opportunity stretching right across the Middle East.

**An Cathaoirleach:** I thank Mr. Bruton. I call on the Leas-Chathaoirleach to propose a vote of thanks to the ambassador on behalf of the House.

**An Leas-Chathaoirleach:** On behalf of the Members of the House, I thank His Excellency, John Bruton, for his very interesting address and for his comprehensive replies to the many questions raised by Senators. I also thank him for his kindness in accepting the invitation to address the House. I wish him well in the future.

*Sitting suspended at 12:40 p.m. and resumed at 2.30 p.m.*

### **Business of Seanad.**

**An Cathaoirleach:** I have notice from Senator Coghlan that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for the Environment, Heritage and Local Government to outline the details of the deer fencing programmes intended to protect woodland and wildlife and to allow for the regeneration of some 200 acres of ancient oak and yew woods in Killarney National Park; how this conforms with the EU habitats directive and the UNESCO biosphere reserve designation and if he will explain his rationale.

I have also received notice from Senator Kitt of the following matter:

The need for the Minister for the Environment, Heritage and Local Government to confirm the up-to-date position of a water supply for Ballygar, Co. Galway.

I have also received notice from Senator Ross of the following matter:

The need for the Minister for the Environment, Heritage and Local Government to facilitate the introduction of licensed competition and choice in the waste compliance sector.

I have also received notice from Senator Feighan of the following matter:

The need for the Minister for Education and Science to clarify when the site for the proposed new community college in Ballinamore, Co. Leitrim will be purchased and the progress to date.

I have also received notice from Senator Tuffy of the following matter:

The need for the Minister for Justice Equality and Law Reform to give the up-to-date position regarding requests by a number

[An Cathaoirleach.]

of community groups and residents associations for CCTV cameras in a number of places in Clondalkin.

I have also received notice from Senator Ulick Burke of the following matter:

The need for the Minister for Transport to co-ordinate and plan in conjunction with Galway County Council and North Tipperary County Council an appropriate plan for the Portumna bridge over the River Shannon, factoring in current and future transport needs, population growth, housing, education and the future commercial development of the town.

I regard the matters raised by Senators Coghlan, Kitt, Ross, Feighan and Tuffy as suitable for discussion on the Adjournment. I have selected Senators Coghlan, Kitt and Ross and they will be taken at the conclusion of business. Senators Feighan and Tuffy may give notice on another day of the matters they wish to raise. I regret I have had to rule out of order the matter raised by Senator Ulick Burke as the Minister has no official responsibility in the matter.

#### Order of Business.

**Mr. Dardis:** The Order of Business is No. 2 — Child Care (Amendment) Bill 2006, Report and Final Stages, to be taken on the conclusion of the Order of Business and to conclude no later than 5 p.m.; and No. 25, motion 9, from the Fine Gael group, on telecommunication structures, to be taken from 5 p.m. until 7 p.m.

**Mr. B. Hayes:** One of the key terms of reference for the Morris tribunal that was established by both Houses of the Oireachtas was to report urgently on matters contained in the terms of reference. Over four months ago the Morris tribunal produced a report and I have repeatedly asked both the Leader and the Acting Leader on the Order of Business when the Government intends to have a debate on the clear conclusions and recommendations set out by Mr. Justice Morris following the publication of his report of four months ago. It is unacceptable that the Oireachtas asks a member of the Judiciary to do a piece of work and we put it in abeyance for four or five months. This House has a responsibility to debate this issue.

I endorse the recommendations published yesterday by the Garda inspectorate and by Senator Maurice Hayes's implementation committee concerning civilianisation of the force and ensuring a more efficient promotions structure in the Garda Síochána. If we take these matters seriously, as we must, we have to debate the Morris tribunal and its report and put in place a system which will ensure the mistakes made in Donegal are not repeated in other parts of the country. I again ask the Acting Leader when the House will debate this matter.

**Mr. O'Toole:** On a similar issue to the urgent matter raised by Senator Brian Hayes I would like to draw the attention of the House to No. 23 on the Order Paper. It has been on the Order Paper for approximately 18 months even though it was introduced as a matter of urgency. We were told it followed from a need to deal with this matter with great dispatch and we established a joint sub-committee.

I wish to refer to the process without getting into the details of the case it deals with. When we set up the sub-committee we were told it was a matter of urgency and I said that the sub-committee would be left to carry the can. The members of the sub-committee are hard-working and have given much time to it. No doubt there are difficult circumstances but I am not interested in that. I want to know where we stand with it. What was the rush about and what has happened in the meantime? Can we get a formal report from the sub-committee on what is happening?

The sub-committee will be blamed for the fact that we did not have legislation in place, as we were told six years ago, to deal with this type of issue. We had possible legislation before us but we did not deal with it. How long will this go on? What will happen if it is not dealt with before the election? This is purely a process issue. One can hardly establish another committee after the election. It raises issues of double jeopardy. Justice delayed is justice denied.

We had better face up to this issue. We have got it completely wrong. Some other method should be found to deal with it as it is going nowhere.

**Dr. Mansergh:** I suggest we have a debate on Iraq, with particular reference to the sentence just passed on the former president, Saddam Hussein.

**Mr. Norris:** Hear, hear.

**Dr. Mansergh:** While there is no doubt in any of our minds he deserves punishment greater than anyone can inflict, we need to ask ourselves whether the carrying out of the execution would prevent or contribute to more deaths or whether what for him would be *un mauvais quart d'heure* — as the French call it — which in certain people's eyes would give him the crown of martyrdom, is really in the international interest. There is both a matter of principle here, since all of us on this Continent are against the death penalty, and a pragmatic question as to whether it would serve any useful purpose. It is to be recommended that there should be an international place of detention for persons such as Saddam Hussein, while I accept it might be too great a burden for the Iraqi regime to carry. Nonetheless, while there is still adequate time, European countries, including Ireland, should debate and perhaps give advice based on history as to whether the richly deserved retribution is the intelligent or moral thing to do.

**Mr. Finucane:** I do not wish to elaborate on what Senator O'Toole said, except to ask him to be patient. As a member of the sub-committee, along with two other Members of the House, we have put a good deal of effort into this in the past two years and we hope to conclude our business. That is all I shall say in this regard. We have never mentioned outside what was discussed in the sub-committee and it puts us in an invidious position when a Member of this House raises the issue.

As someone who comes from Limerick I am ashamed of what is happening in that area. It is sad and regrettable. I recognise that certain work is being done as regards trying to improve the situation in Moyross. However, what is now evolving in Limerick is a shocking commentary, where a 15 year old shot a boy aged five who comes from another estate in the city, in the South Hill area, which has had its share of problems. A young person of 15 carried an automatic gun with cartridges on a crowded bus going into the city last Sunday and was subsequently arrested. The sequence to this is that the god-fathers of crime in the Limerick area are now using minors to carry out shooting offences within our community and that is a shocking indictment.

I compliment the gardaí on the work they are trying to do and I congratulate Mr. John Fitzgerald, the former Dublin City Manager, who comes from Limerick, and who recently has been appointed to investigate the problem. I want maximum resources put in place in Limerick to stifle what is happening, which is doing a great deal of harm to the community and frightening a great many good meaning people in the estates affected. We have to remove from circulation the people responsible and the sooner we do so the better.

**Ms Cox:** I support Senator Mansergh as regards the death penalty for Saddam Hussein. It is regrettable this is the level of justice people believe ought to be meted out. The last time the death penalty was used in Ireland was in 1954. It is not that long ago and people remember it. The House should pass a motion, hold a debate and condemn outright this sentence. There is no doubt the man created appalling atrocities, but there is no justification for seeing him hanged in front of the world. This will do nothing for the cause of justice or to stop the war on terror.

**Mr. Norris:** I am very happy to agree strongly with my colleague, Senator Mansergh, who called for a debate on Iraq, particularly in the light of the death sentence passed on Saddam Hussein. I have a long record over 20 years, as the Cathaoirleach knows, of opposing Saddam Hussein on human rights issues. However, it is not a coincidence that the announcement of the death sentence came just in the final moments of the American elections. President Bush has a habit, as he had even as Governor of Texas, of creating

a few executions *pour encourager les voters*. I expect my honourable colleagues in Fianna Fáil will agree, although they have not said so, that it is a vitiation of the whole legal process. The court was established by an edict from Mr. Paul Bremner and the rules of evidence were interfered with. There was supposed to be an international conference to redress this, but it was scrapped. The government ministers prejudiced the trial by pronouncing him guilty and saying they were going to kill him before it started. One judge had to withdraw because of American pressure. Three of his attorneys were murdered. A trial judge was removed last week because they thought he was too sympathetic. It is a dreadful abandonment of all the principles of a fair trial, even for monsters. Senator Mansergh's suggestion of some type of internment camp for these monsters is very important. It is also significant, in my opinion, that the Americans again resisted any attempt to bring it under the auspices of the International Court of Justice. Of course they did because the final point I want to make—

**An Cathaoirleach:** All of these matters will be points to be made by the Senator in the debate.

**Mr. Norris:** I am using these points as an argument to support Senator Mansergh's call for a debate. Bush and Blair are guilty of precisely the same crimes of which they are accusing Saddam Hussein, the use of chemical weapons, the mass murder of 650,000 civilians, the use of torture and all of these things. Please let us have a debate on this matter.

I want to raise a final matter, namely, that there should be a debate on the GAA. As a taxpayer—

**An Cathaoirleach:** No, we cannot have that.

**Mr. Norris:** It is a wonderful institution, but as a taxpayer, I strongly object to my money being used to fund the type of disgraceful exhibition of—

**Mr. Coonan:** It is close to the Senator's heart.

**Mr. Norris:** It is a disgrace. The Senator should grow up. We are living in the American empire, after all.

**An Cathaoirleach:** The Senator is being irrelevant.

**Mr. Norris:** As a taxpayer, I do not want my money used to fund a disgraceful exhibition, performed in front of 20,000 children.

**An Cathaoirleach:** Order, please, order. The Senator is being irrelevant.

**Mr. Norris:** The GAA regards the taxpayer as a rich tax cow and we are entitled to decent standards.

**An Cathaoirleach:** The Senator is out of order.

**Mr. Norris:** That is the situation and the Cathaoirleach knows it. It is just because his voters are involved—

**Mr. Mooney:** It is a long way from Baghdad to Croke Park, and he started so well.

I support Senator Mansergh. I also ask the Leader to convey the thanks of the House, since the European Union and Ireland, by extension, issued a very strong condemnation of the death penalty sentence. Tensions are running very high in Iraq, as I am sure Members are aware. Essentially, the Shia community is delighted at the sentence and it has had the opposite impact on the Sunnai community. In the context of a debate on Iraq, it should be noted that the country is running into civil war. There is currently a television strand running on Channel 4, which I commend to Members. It shows in great detail the breakdown of communities in Iraq. Undoubtedly, there is now a substantial amount of evidence in support of allegations that members of the Iraqi Administration are fomenting sectarian civil war within the various communities. We have gone beyond the point when the so-called coalition of the willing is there for the purpose of bringing peace and prosperity. There is a real need for Parliaments such as this and others within the European Union to examine, in so far as we can with the help of our relevant Minister, what is going on in Iraq and how we can get ourselves out of this morass.

Finally, I welcome the fact that in recent days the House of Commons has finally pardoned the Shot at Dawn volunteers. I believe this to be a landmark decision. I ask the Acting Leader to convey the thanks of all to the Minister for Foreign Affairs, Deputy Dermot Ahern and his Department, who in a sense 18 months ago acted as a catalyst towards seeing this day arrive, when they released the report which was forensically detailed, and to Mr. Peter Mulvaney, the Shot at Dawn co-ordinator—

**Mr. B. Hayes:** And Mr. Des Browne.

**Mr. Mooney:** —and of course my friend and colleague, Senator Brian Hayes. It is a landmark judgment that people thought would never happen after such a long time. It must bring great comfort to the surviving families.

**Mr. Coghlan:** I echo Senator Brian Hayes's call for a debate on the interim report of the Morris tribunal. It has been published for quite a long time and we are in danger of receiving the next interim report from Mr. Justice Morris before having discussed the current report. That is not good practice. The important subject matter is worthy of debate in this House.

Regarding the matter raised by Senator O'Toole and responded to—

**An Cathaoirleach:** The House will not dwell on it. We will wait for the report.

**Mr. Coghlan:** I assure the Cathaoirleach I was not about to dwell on it. Perhaps such matters could also be covered by an interim report. I am prepared to be patient.

The Privacy Bill was mentioned in the Dáil yesterday. The Minister indicated that further consultation was proposed, as confirmed by the Leader a few weeks ago. Does this indicate a greater priority being accorded to it? What has cropped up in the meantime?

**Mr. MacSharry:** It would be appropriate if we had a debate about tribunals, their progress so far and their usefulness in the future. In many cases they have served their purpose, allowing us to change rules and to ensure that what happened in the past does not happen again. In some cases, they have no relevance in our society other than to make millionaires out of junior barristers and easy copy for lazy journalists.

I call for a debate following recent commentary in the media from certain quarters about drink driving. I completely disassociate my party from a comment by certain political interests.

**Mr. Finucane:** A member of Senator MacSharry's party supported him.

**Mr. MacSharry:** We need a debate on the matter because there are serious issues in rural Ireland that we must take on board. It is not well known that people are at risk the next morning. We must raise awareness in this area.

I am not a frequent contributor to debates on Iraq. However, it is a no-brainer to seek to kill someone in pursuit of justice anywhere in the world, especially in Iraq.

**Ms Tuffy:** I support calls by Senator Brian Hayes for a debate in respect of the two reports published yesterday, those of the Garda Síochána Inspectorate and the Garda Síochána advisory group. The former refers to the need for civilian support staff to release gardaí for operational duties. It considers the potential risk of disproportionate emphasis placed on headquarters and specialised units to the detriment of uniformed police operation. It calls for greater and more effective uniformed police visibility and notes that uniformed police are the lifeblood of the organisation. It calls for an immediate acknowledgement of uniformed police field operations.

I interpret that as referring to the need to return to gardaí on the beat working in communities. The Garda Síochána has been heading in the opposite direction in recent years. The number of community gardaí in the areas around where I live, Lucan and Clondalkin, has been slashed. In Clondalkin it dropped from 16 to nine last year. One can see the effects of this. Crime and anti-social behaviour are out of hand in these com-

munities and I seek a reversal of the trend, now that it has been backed up by these two reports. The Labour Party calls for community garda to be a promotional rank. Ms Kathleen O'Toole's report shows that gardaí see specialised units as a promotion route rather than ordinary policing duties. We must change that.

**Mr. Hanafin:** I support calls for a debate on the Middle East. Today, 18 people were killed in Beit Hanoun. For those of us who strongly support Israel and her right to thrive and survive, it is sad to see the response to a single rocket attack kill 18 people.

**Mr. Norris:** Hear, hear.

**Mr. Hanafin:** There is no difference between Palestinian children's shoes in the rubble and Jewish children's shoes in the rubble. Both incidents are sickening and the public is outraged.

As a pro-life supporter I am opposed to the death sentence. Not only does it not serve the purpose intended, it is counter-productive. It is the soft, weak option. One may be executed within months instead of spending a lifetime in prison. This month, the International Criminal Court Bill was passed by this House. Its purpose was that any person who commits genocide must answer to a court, sooner or later. I would prefer to see Saddam Hussein locked up in The Hague for the extent of his life, answering the questions for the thousands he has murdered.

In the debate on the Middle East we should discuss the prospect, which we hope to see soon, of the US troops returning to base and a thriving democracy taking root in Iraq. It is sad to note, as Senator Mooney stated, that some are trying to entice the Iraqis to engage in sectarianism. Europe has seen such carnage. In the past 60 years we have lived in *Pax Americana*. No matter what we say about the US, it came to the aid of Europe twice. We live in *Pax Americana*. I look forward to the day when Iraq lives in that peace.

**Mr. Browne:** I oppose the Order of Business for the reason I outlined last week. The Child Care (Amendment) Bill will have amendments made to it in the Dáil, arising from the Ferns Report, after it passes this House. These are most serious and deserve the scrutiny of both Houses, not the scrutiny of one House and the rubber-stamping of the second House. This is not the way to conduct business and it is crazy to pass a Bill that we already know is incomplete and will be changed in the Dáil.

Today's address by the European Commission ambassador to the US, Mr. John Bruton, was excellent. Are there any plans to invite the current President of the United States to address both Houses?

**Mr. Norris:** The Senator must be joking.

**Mr. Browne:** I know Senator Norris would have plenty of questions for him.

**Mr. Norris:** Plenty of questions, such as why he has not been impeached.

**Mr. Browne:** He received 58 million votes in the last election, the highest vote any US president ever received.

**Mr. Norris:** Is Senator Browne sure of that?

**Mr. Browne:** He is democratically elected and it is protocol that US presidents are invited. Can the Acting Leader find out what is the situation? We could consider this issue.

**Mr. Norris:** I would welcome it and would support Senator Browne.

**An Cathaoirleach:** It would be a matter for the Committee on Procedure and Privileges.

**Mr. Browne:** There will be a referendum on the rights of children. Could we also have a referendum on the right of every citizen to proper health care? This matter has been raised many times and it seems crazy that it is not the case at present. We should enshrine it in the Constitution that every citizen in the State is entitled to proper health care.

This morning I listened to Today FM, a station that has played a constructive role in communicating the message on road safety. I was disappointed at the language and name-calling used by the presenter of the show. Everyone is entitled to different views. It does not give one the right to describe people in disparaging terms because one disagrees with them. It is better to stick to the arguments and expressing one's views. The presenter in question did no service—

**An Cathaoirleach:** We have no control over the language—

**Mr. Browne:** In a democracy people should not be afraid of free speech. One's opinion is one's own business and one should deal with the issues raised but not start name-calling, as happened this morning.

**Mr. J. Phelan:** I agree with Senator Browne's point on the Child Care (Amendment) Bill. He is right to oppose the Order of Business. The Bill will be significantly amended in the other House and it is not right that we are expected to rubber stamp it here today without fully discussing amendments to be made later.

I am concerned about the plight of middle-aged and elderly men in the countryside who often find themselves with significant housing problems and live in prefabricated buildings. I have been presented with a number of cases in Kilkenny recently and know of cases in other counties in

[Mr. J. Phelan.]

which these people are given lowest priority in the local authority housing strategy. Many live in deplorable conditions. It is unacceptable that this continues to be the case. Will the Acting Leader invite the Minister of State at the Department of the Environment, Heritage and Local Government, with responsibility for housing, to the House to explain what action the Government and local authorities intend to take to ensure that these people are better looked after?

**Mr. J. Walsh:** I support the call made by Senator MacSharry for a review, update and progress report on each of the tribunals. I agree too with his comments on the overrun on costs, which is a scandal. There have been previous requests for this in the House. I am bemused by the reluctance to have a debate and seek such progress reports. Does the Acting Leader have any information in that regard? This House was involved in establishing these tribunals. No one is asking for them to be closed down but they should be conducted and issue reports in as efficient a manner as possible. Since the inception of these tribunals legislation has been enacted to facilitate that.

I also support Senator Tuffey's remarks on promotions for those who participate in community policing. It is essential if people are to commit fully to this work that there be a career path for them to follow.

An independent report was issued on Monday in Belfast and yesterday in Dublin, by an international panel from the Notre Dame law school in Indiana, on collusion by British forces in various murders in Northern Ireland and this jurisdiction during the Troubles. This should be debated here because collusion continues by virtue of the failure of the British authorities and Government, and the Northern Ireland Office, to co-operate with any of the investigations into these matters.

**Mr. Norris:** That includes the Irish Government.

**Mr. J. Walsh:** The collusion continues and this House should debate all these issues. The independent report would be a very good foundation for doing so.

**Mr. Moylan:** Will the Acting Leader ask the Minister for Agriculture and Food to come to the House for a debate on agricultural matters, particularly the many recent grant-aid announcements she has made? There are difficulties in regard to planning permission for on-farm development and it is important that the Members of the Seanad have an opportunity to express their views on this to the Minister.

The Minister for Arts, Sport and Tourism should meet with the two bodies responsible for what happened in Croke Park last Sunday.

**An Cathaoirleach:** We have no control over that.

**Mr. Norris:** It was taxpayers' money.

**Mr. B. Hayes:** It should not be ignored. It is an issue of public concern.

**Mr. Moylan:** The Minister has given substantial grant-aid to certain organisations and he should seek to speak to them at least.

**Mr. Dardis:** Senator Brian Hayes, and Senators Coghlan, MacSharry, Tuffey and Jim Walsh referred to tribunals and the Garda Síochána. Senator Brian Hayes mentioned the interim report of the Morris tribunal. It is not usual to discuss interim reports but I am amenable to the suggestion and shall pursue the matter with a view to having it discussed, if that is possible.

The recommendations apply outside the terms of the report with regard to the Garda Síochána. Senators Brian Hayes and Tuffey raised this matter in regard to the reports of the Garda inspectorate and the advisory group, and the question of civilianisation of the Garda. Those matters merit discussion here. We all, including the Minister, agree that there should be more gardaí on the beat and they should be more visible. That is one of the reasons behind the civilianisation proposal. There is also the related matter of promotion within the force.

Senator Jim Walsh spoke about legislation and the tribunals. We all become impatient about the length of time it takes for tribunals to report and legislation was introduced to expedite that in a couple of cases but we must recall that the Oireachtas set up the tribunals and they must be given time. People who appear before them sometimes go to the courts to vindicate their rights and that must be allowed too.

Senators O'Toole, Finucane and Coghlan raised No. 23, regarding the so-called Curtin committee. I and Senator Finucane are precluded from speaking about it—

**Mr. O'Toole:** What is the Senator refuting?

**Mr. Dardis:** I am not refuting anything.

**Mr. O'Toole:** I apologise, I misheard the Senator.

**Mr. Norris:** Senator O'Toole is a little deaf.

**Mr. Dardis:** I am precluded from saying anything on that matter and therefore do not wish to comment, beyond saying that there has been recourse to the courts while the committee has been sitting which has inevitably led to delays.

Senators Mansergh, Cox, Norris, Mooney, MacSharry and Hanafin referred to Iraq in one way or another. Senator Mansergh particularly referred to the death sentence passed on Saddam Hussein. When the EU ambassador to the US,

Mr. Bruton, addressed us this morning he left us in no doubt on the European Union's view of the death penalty. Members on all sides of the House share Mr. Bruton's view that the death penalty is not an appropriate punishment. He put it well when he said that there is a degree of Old Testament retribution in some of the sentences, the death penalty and others, in the United States, which is not desirable. We oppose capital punishment. However horrendous the crime and however dramatic should be the penalty for them, the death penalty never was and never will be an answer. It does not prevent further deaths.

Senator Hanafin raised the related matter of Israel and Palestine which Mr. Bruton said this morning is a key issue in global politics. It would be appropriate for the House to find time to discuss the matter of Iraq and the wider question of peace in the Middle East. The ambassador emphasised the primacy of the two state solution, the preferred one of the European Union and the United States.

I sympathise with Senator Finucane on the recent events in Limerick. It is appalling that a child of that age was shot in broad daylight by another child. One must condemn an incident of such a nature in the strongest possible terms. I know the Garda has had improved success in rooting out serious crime in Limerick. We wish them well in the continued fight. Although Senator Finucane called for increased resources, the Minister is committed to providing the necessary resources to deal with this matter.

Senator Norris and Senator Moylan raised last Sunday's events in Croke Park. The GAA is perfectly competent to deal with these matters in its own way. The Minister for Arts, Sport and Tourism, however, does have a role and he may attend the House to debate the wider issues involved.

I congratulate Senator Mooney on the success of the Shot at Dawn campaign. I also congratulate the Minister for Foreign Affairs and the members of the British-Irish Inter-Parliamentary Body who played a significant role as well. It puts the earlier remarks about Saddam Hussein into a particular context, especially when one considers the trivial matters for which those soldiers were executed.

With regard to Senator Coghlan's request on the Privacy Bill, the Minister is prepared to

debate it in the House in advance of it being taken by the House.

Senator MacSharry raised the issue of drinking and driving. When the Minister for Transport, Deputy Cullen, last attended the House, the morning after factor was mentioned. If one is drunk at 10 o'clock at night, one is drunk at 10 o'clock the following morning and is not capable of driving a car. The Minister agreed with this. It raises serious issues for rural areas but it must be accepted that one cannot drink and drive. That should be the end of it.

Senator Browne and Senator John Paul Phelan raised concerns over the Child Care (Amendment) Bill. The Leader has no control over what amendments are brought before the House. If there are difficulties, they should be raised with the relevant Minister. Under Standing Orders, Bills and amendments must be debated in both Houses before a Bill can be passed.

An invitation to the US President, Mr. Bush, to address both Houses is matter for the Committee on Procedure and Privileges. I note Senator Browne's points on the rights of children under the Constitution and health care. With regard to name-calling and radio programmes, I hope Senator Browne will take that as guidance for his conduct in the House. I hope there will be no name-calling in the House, especially when we do not want it to happen on radio.

**Mr. B. Hayes:** Then it would be very dull indeed.

**Mr. Dardis:** Senator John Paul Phelan raised the matter of single men living in prefab houses. All of us have encountered this difficult situation. This group of people are at the bottom of the pile when local authorities allocate housing. I will bring this matter to the attention of the Minister responsible.

Senator Jim Walsh called for a debate on the Notre Dame law school report on collusion by British forces in several murders in Northern Ireland. It could be part of a wider debate on Northern Ireland. Senator Moylan is correct that it is some time since the Minister for Agriculture and Food attended the House. Many issues in agriculture have arisen in recent months and it would be useful for the House to debate them.

Question put: "That the Order of Business be agreed to."

The Seanad divided: Tá, 28; Níl, 18.

Tá

Brady, Cyprian.  
Brennan, Michael.  
Cox, Margaret.  
Daly, Brendan.  
Dardis, John.  
Dooley, Timmy.  
Feeney, Geraldine.  
Fitzgerald, Liam.  
Glynn, Camillus.  
Hanafin, John.

Hayes, Maurice.  
Kenneally, Brendan.  
Kitt, Michael P.  
Leyden, Terry.  
Lydon, Donal J.  
MacSharry, Marc.  
Mansergh, Martin.  
Minihan, John.  
Mooney, Paschal C.  
Moylan, Pat.

Tá—continued

Ó Murchú, Labhrás.  
O'Brien, Francis.  
Ormonde, Ann.  
Phelan, Kieran.

Scanlon, Eamon.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bradford, Paul.  
Browne, Fergal.  
Burke, Paddy.  
Burke, Ulick.  
Coghlan, Paul.  
Coonan, Noel.  
Cummins, Maurice.  
Feighan, Frank.  
Finucane, Michael.

Hayes, Brian.  
McDowell, Derek.  
McHugh, Joe.  
Norris, David.  
O'Toole, Joe.  
Phelan, John.  
Ross, Shane.  
Terry, Sheila.  
Tuffy, Joanna.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Browne and Cummins.

Question declared carried.

Order of Business agreed to.

### Child Care (Amendment) Bill 2006: Report and Final Stages.

**An Leas-Chathaoirleach:** Before we commence, I remind Members they may speak only once on Report Stage except for the proposer of an amendment, who may reply to the discussion on the amendment. Each amendment must be seconded.

Amendment No. 1 is a Government amendment and is also in the names of Senators Henry and O'Toole. Amendments Nos. 2, 3 and 6 are related to amendment No. 1 and all may be discussed together. Is that agreed? Agreed.

Government amendment No. 1:

In page 3, lines 29 and 30, to delete "continuous".

**Minister of State at the Department of Health and Children (Mr. B. Lenihan):** Amendment No. 6 is a Government amendment. I indicated on Committee Stage that I accepted the thinking behind the views expressed by Senators in regard to interrupted placements. The appropriate period to be disregarded in regard to calculating the period under subsection (2)(a) should be no more than 30 days. Hence, Government amendment No. 6 inserts a new subsection which provides that in determining whether a foster parent or relative has been taking care of a child for the period required by subsection 2(a), any interruption of the placement during that period shall be disregarded unless the total number of days of interruption, whether consecutive or not, exceeds 30. This will allow for short interruptions in the placement of a child with the same foster parent or relative to be disregarded — perhaps in cases where the child returns to his or her natural family but the return does not work satisfactorily or issues arise between the child and the foster

carers which result in the child moving to another placement for a short period until the issues are satisfactorily resolved. It is on that basis I propose to reject amendment No. 3 in the name of Senator Henry which is similar, although not identical, to my amendment to address the same issue. The Government response to that issue is contained in amendment No. 6.

Amendment No. 1 is a Government amendment which is also in the names of Senators Henry and O'Toole and is linked to amendment No. 3 with which I have dealt. Amendment No. 2 in the names of Senators Browne and Brian Hayes deals with reducing the period of time for which a child should be in continuous care. The requirement in the Bill is that a child should be in the care of a foster parent or relative for a continuous period of five years. I was anxious to make the point that period of time is an appropriate one for foster parents or relative foster carers to have a sufficient level of understanding of the child's needs. If there is instability or interruptions in the placement, it would not be appropriate for foster carers to have increased autonomy in respect of the child.

**Mr. Browne:** My amendment No. 2 distinguishes between children aged 12 or younger and children aged 13 or older. As the Minister of State knows, even in legal terms, a differentiation is made between children aged zero to 18 years. While we apply the term "minors" to that group, there are different rules for children. The Minister of State will be more familiar than I with the various terms. The term "*doli incapax*", which means incapable of crime, was used to provide for children between the ages of seven and 14 in that they could not understand the consequences of their actions. That led to different interpretations of the law for children involved in court cases. Section 52 of the Children Act 2001 provides that no child under the age of 12 is capable of committing an offence. The Tánaiste and Minister for Justice, Equality and Law Reform later

changed those rules under the Criminal Justice Act 2006.

**Mr. B. Lenihan:** He did not change them substantially.

**Mr. Browne:** The point I make is that in other legislation, the Government has differentiated between the different ages and acknowledged that in legal terms, we do not classify all people between the ages of zero and 18 as one group. Children are treated in many different ways and at many different levels by the law according to the extent of their minority. A point brought to my attention was that persons under 18 years are minors yet some of them can drive, buy cigarettes, have sexual intercourse legally, leave home and get married. There is a large range within that group.

My amendment is sensible and we should differentiate so the five year rule would apply to children between the ages of zero and 12 years and the three year rule apply to children aged 13 years or over in foster care. For a child in his or her teenage years, five years is equivalent to his or her secondary education. That is why I believe five years a bit long. I have no difficulty with the five year rule in the case of an infant being fostered but it will present difficulties in the case of a teenager. That is why I put forward this amendment in a helpful manner.

**Mr. B. Lenihan:** I thank Senator Browne for tabling the amendment. It is not clear from the list of amendments tabled for Report Stage that the distinction is drawn but I am prepared to discuss the issue on the basis the Senator tabled in the amendment in that form. It seeks to draw a distinction for the purposes of continuity between the child aged under 12 and the child aged over 12. The Senator rightly draws attention to the fact the Oireachtas has chosen different ages in different enactments and he instanced the case of the common law where there was the principle of *doli incapax*. I am happy to state the concept of *doli incapax* was banished from our law as a result of amendments to the Criminal Act on the age criminal responsibility. There is no longer a rebuttable presumption that a child between seven and 14 years is incapable of a crime. There is now a different statutory scheme involving a

control of all such prosecutions by the Director of Public Prosecutions.

As the Senator rightly said, the Children Act provides that the general age of criminal responsibility is 12 years and that is now in force. There is a very limited exception in cases of homicide and very serious sexual offences where a ten or an 11 year old is deemed capable of committing such offences. The Senator also rightly pointed out that a different age is fixed for driving purposes, that the age is fixed at 16 years for marriage proposes and that for the purposes of consent not being required to be proven against an assailant, the age is 17 years under the legislation enacted this year. There is a wide variety of circumstances and the Senator makes the case that teenage life is a rather different span of experience from childhood life in general and that five teenage years are long ones.

I appreciate the spirit in which the amendment was tabled but in foster care, the care of teenagers is often the most difficult aspect of the whole equation. The bulk of children in long-term foster care tend to be taken into care at a very young age and so the continuity and attachment are established very early on. It would be very unusual for a child aged 12 to be placed in foster care for an unbroken period of time. I am not certain the issue Senator Browne is trying to address is one that arises that often. Given that teenage years are a time of maturity, maturation and great change, some emotional stability for the teenager is probably more important than ever. There is an argument for arranging this matter the other way around rather than in the sequence in which the Senator has raised it.

Amendment agreed to.

**Mr. Browne:** I move amendment No. 2:

In page 3, line 30, to delete “five years” and substitute the following:

“—

(i) 5 years in the case of a child aged 12 years or younger, and

(ii) 3 years in the case of a child aged 13 years or older.”

**Ms Tuffy:** I second the amendment.

Question put: “That the words proposed to be deleted stand.”

The Seanad divided: Tá, 26; Níl, 14.

Tá

Brady, Cyprian.  
Brennan, Michael.  
Cox, Margaret.  
Daly, Brendan.  
Dooley, Timmy.  
Fitzgerald, Liam.  
Glynn, Camillus.  
Hanafin, John.  
Kenneally, Brendan.

Kitt, Michael P.  
Leyden, Terry.  
Lydon, Donal J.  
MacSharry, Marc.  
Mansergh, Martin.  
Minihan, John.  
Mooney, Paschal C.  
Morrissey, Tom.  
Moylan, Pat.

Tá—*continued*

Ó Murchú, Labhrás.  
O'Brien, Francis.  
Ormonde, Ann.  
Phelan, Kieran.

Scanlon, Eamon.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Browne, Fergal.  
Burke, Paddy.  
Burke, Ulick.  
Coughlan, Paul.  
Coonan, Noel.  
Cummins, Maurice.  
Feighan, Frank.

Hayes, Brian.  
McHugh, Joe.  
Norris, David.  
Phelan, John.  
Ross, Shane.  
Terry, Sheila.  
Tuffy, Joanna.

Tellers: Tá, Senators Moylan and Minihan; Níl, Senators Browne and Cummins.

Question declared carried.

Amendment declared lost.

Amendment No. 3 not moved.

**An Leas-Chathaoirleach:** Amendments Nos. 4, 5 and 22 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Ms Tuffy:** I move amendment No. 4:

In page 4, lines 8 to 10, to delete all words from and including “a” in line 8 down to and including “time” in line 10 and substitute “the parents of the child”.

I moved this amendment on Committee Stage. I have great difficulty with the wording as it stands. I examined much of it on Committee Stage and I will discuss some of the problems it presents, including those which have become apparent since then. Certain people must give their consent in respect of orders that can be sought under this wording. At the moment, this right is limited to those parents who have custody of the child at the time. Alternatively, it allows for someone acting *in loco parentis* to play a role.

What would happen if neither parent had custody of the child at the time and someone *in loco parentis* had custody? What would happen if the parents in question were married? The legislation as it stands would essentially give more rights to someone who is a legal stranger to the child, namely, the person acting *in loco parentis*. I believe someone who acts *in loco parentis* should have a role in this legislation. On the other hand, the legislation does not give a say to two people who are legal guardians because they are married to each other but who do not have custody of the child at the time. This is one example where I see a problem with the way the legislation is worded.

What would happen if the parent who had custody of the child at the time was the unmarried father who, again, has no legal relationship with the child and is not the guardian, and the person without custody was the mother, who is the legal

guardian? She is not given a say even though she is the child's legal guardian. The way in which the legislation is worded, which the Minister of State said goes back to previous legislation, is rooted in a bias against fathers, especially unmarried fathers. When one considers the case of a married father, one can see that the legislation is discriminating against someone who is the legal guardian of his children.

The wording must be re-examined. Even if it is not examined now, it should be examined in future. Possibly the way to re-examine the wording in this section is to introduce the type of amendment I will move later which would essentially include someone who has a bona fide interest.

The wording definitely presents problems and we must re-examine the way in which we define parenthood. The Children Act 1997 defines a parent as a mother or a father. We must re-examine this. Apart from the fact that the legislation as currently worded is biased against fathers, it also could be used against a mother who does not have custody of her child at the relevant time in that she would not have a say. The Minister of State needs to re-examine this section.

Amendment No. 5 is similar. There is another contradiction in this section. Paragraph (d)(ii) states, “if the child is in its care under section 18, given notice of the application to a parent having custody of the child at the relevant time. . .” I could be misinterpreting that paragraph but it appears that account would be taken of a relevant time before the child was in the care of the Health Service Executive. My basic point is that parents, and possibly others, should not be excluded from this process. Therefore, the Minister of State should broaden the wording of this section. The legislation should not discriminate against a parent who does not have custody, as there may be many reasons for that. Perhaps that is the parent who should have custody.

A safety net is provided in the wording of subsection (3) which states:

4 o'clock

The requirement of subsection (2) (d) as to the consent or notification of a parent or other person does not apply if—

(a) the court is satisfied that he or she is missing and cannot be found by the Health Service Executive, or

(b) the court, having regard to the child's welfare, so directs.

The court has the final say and the child's welfare is given prominence in that subsection. Given a safety net is provided in terms of the court, why can the legislation not be broadened to ensure both parents, irrespective of their marital status, have a say? It is important the court has the final say and must have regard to the child's welfare.

Amendment No. 22 relates to variation of the order. The point I made about amendment No. 5 also applies in this case. The type of variation being provided for in regard to the new section 43B could apply to conditions, for example, access. Subsection (9) refers to section 37 and my reading of that is that an order could be issued that simultaneously covers section 37 of the Principal Act and relates to this new provision. It could apply to an element of access. Why is the non-custodial parent again being excluded? This is not appropriate particularly when foster parents, relatives or persons acting *in loco parentis* are allowed have a say.

**Mr. B. Lenihan:** I indicated to the Senator on Committee Stage that this was an issue we should revisit on Report Stage. My officials have assisted me in carrying out considerable research on the issues involved, and there is an explanation. Having regard to what is provided for in the legislation, the Health Service Executive is necessarily a party in this regard. The foster parent or relative to whom the order was granted is also a party. That is not a plurality of persons in that the foster care can take two forms, namely, relative foster care or a foster parent. The other two categories referred to are the person who has custody of the child at the relevant time or a person acting *in loco parentis*.

In regard to the 1991 Act, where the question as to who should be served with proceedings arises, the Act provides that under section 4(2) a child cannot be taken into voluntary care against the wishes of a person having custody or of any person acting *in loco parentis*. Section 4(3)(b) of that Act provides that when a child is taken into voluntary care, the HSE shall have regard to the wishes of the parent having custody or of any person acting *in loco parentis* in the provision of such care. In the context of a section 4 application where a child is surrendered voluntarily into care, the persons who do that are the persons having custody or the person acting *in loco parentis*. Therefore, there is an inner logic in providing in their case that they again become the party who are notified.

Section 4(4) of the 1991 Act provides that the HSE shall take a child into care if, among other things, a parent having custody of him or her is missing. Section 6(4) of the Act also provides that the HSE shall not take a child into care for the purposes of adoption against the wishes of a parent having custody or of any person acting *in loco parentis*. Section 12(4) of that Act provides that when a child is removed to safety by the Garda Síochána, the HSE returns the child to the parent having custody, or to any person acting *in loco parentis* or seeks an emergency care order. Section 14(1) of that Act provides that when a child is delivered up, or placed into the custody of the HSE in an emergency, the HSE informs the parent having custody or the person acting *in loco parentis*.

When we dealt with the Bill on the last occasion I mentioned section 17(2)(b) of the 1991 Act which deals with interim care orders. This has been amended by section 267 of the Children Act 2001. Again in this instance the parent having custody or the person acting *in loco parentis* is the person on notice. Likewise, an application for an interim care order for an extension of an order must be made on notice to the same parties in section 17(3) of 1991 Act. Section 18(7) and (8) of that Act provide that when a care order is made the court may require the parents of the child or either one of them to contribute to the HSE for the care of the care. I want to return to that point because it is the only example where the parents are referred to. Under this legislation the parent has a very wide meaning. I will return to that point.

The 1991 Act also provides that a supervision order shall authorise the HSE to visit a child on occasion and give the child's parents or person acting *in loco parentis* any necessary advice as to the care of the child. That is the supervision order machinery which is the lesser machinery in the Act. There is the care order and the supervision order, which is a lesser form of control. Again, that is exercised against the parent or person acting *in loco parentis* under section 19(2) of the 1991 Act.

If a parent or person acting *in loco parentis* is dissatisfied with how the HSE has exercised its authority — the word “parent” is included in this subsection — he or she has a remedy under section 19(3) of the 1991 Act. Section 19(4) of the 1991 Act provides that the supervision order can require the parents of a child or the person acting *in loco parentis* to have the child attend a medical or psychiatric examination.

In addition to the points Senator Tuffy made in this regard, she mentioned the question of access. That is dealt with section 37(1) of the primary Act. It provides that the HSE shall facilitate reasonable access to a child in its care by the child's parents, any person acting *in loco parentis* or any other person who, in the opinion of the executive, has a bona fide interest. Section 37 of

[Mr. B. Lenihan.]

the 1991 Act protects the position in regard to access.

For the sake of completion, section 42(2)(c) of the primary Act provides that reviews of cases of children in care require that the HSE considers whether it would be in the best interests of the child to be given into the custody of his or her parents. An important point, which I overlooked on the last occasion — although I am not saying Senator Tuffy overlooked it but it seems we both did — is that this Bill is an amendment to the 1991 Act. The Senator will note that the bulk of the sections of the 1991 Act involve notice being given to the person in custody or the person *in loco parentis*. This is not because of some legislative intent to disadvantage or to discriminate against any other party. It is because the child care legislation is a code for the protection of children. In the first instance, that protection has to be exercised against the person who has the actual custody of the child or who stands in the relationship of a parent to that child.

That has to be the scheme and purpose of the legislation. Were it otherwise, those whose duty it is to implement the legislation would be obliged to make their investigations and see that the child is in the custody of a particular person or that a particular person is acting as parent in respect of that child. If we were to go down the path Senator Tuffy is advocating then the HSE, through its servants and agents, would have to make further inquiries about all the other persons who might have some relationship to that child, legal or factual, in a context where the child is in need of care and protection. That is why the legislation provides as it does in the bulk of the matters that it is the person having custody or the person standing in the relationship of a parent to the child who has to be notified.

In the 1991 Act the Legislature has not omitted to address the concerns raised by Senator Tuffy because section 3 of the Act, the first substantive section dealing with the functions of the health boards — and now by adaption the HSE — states that it is the function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection. It further states in subsection (2):

In the performance of this function, a health board shall—

(a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children in its area;

(b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—

A specific obligation is imposed by section 3 on the health board to have regard to the rights and duties of parents, whether under the Constitution

or otherwise. It is not limited to parents under the Constitution, who of course would be parents of a family founded upon a marriage. The Senator will note the expression used is that it extends to all parents “or otherwise”. That relates to the entire operations of the HSE in the context of the implementation of this legislation.

I mentioned that the two crucial sections from the point of view of taking children into care are sections 4 and 18. Section 4 of the 1991 Act deals with the taking of the child into voluntary care. Clearly that is done on consent and it cannot be done against the wishes of a parent having custody of the child or a person acting *in loco parentis* to the child. Such a person would have to be put on notice of any application to obtain one of these orders under the new legislation that would give foster parents rights. Given that the parents consented to place the child into care, clearly they have a veto on the foster parents obtaining any rights in respect of the child.

The other circumstance we have to address relates to section 18. This is the section that permits children to be taken into care. Again, I have checked out the matter because that section is silent in respect of what party should be put on notice of an application for a primary care order. The matter is dealt with by rules of court. The relevant rule of court provides the exact same statutory formula as is used in the Act. The care application must be made on notice to the person having custody of the child or a person standing *in loco parentis* to the child. That is the rule of court and it is implemented in section 18.

I draw the attention of Senator Tuffy to a further section because it is of particular importance in the context of the point she raised. I refer to section 24 of the 1991 Act which will apply to the amending legislation. Section 24 provides that in any proceedings before a court under this Act in regard to the care and protection of a child, the court must have regard to the rights and duties of parents, whether under the Constitution or otherwise, so all parents fall within the intendment of section 24. By virtue of section 24, the District Court clearly has to have regard to the status of parents under the Constitution and parents otherwise. That is a function of the District Court under the legislation.

In the context of a section 18 application where a child is being taken into care, plainly the court, under its own rules, is only obliged to serve the person *in loco parentis* — the person having custody of the child — but the court may well join a further party having regard to the provisions of section 24. The court has that inherent power by virtue of section 24 of the Act. Having said all that and given that the Child Care Act scheme in regard to these matters is considerably broader than the scheme in many other items of legislation, there is no reference to the position of the legal guardian. Senator Tuffy is correct on that. I made the point earlier that I understand the scheme of the legislation because the anxiety is

to give the social worker the power to deal with the position that he or she faces — a child who is in the custody of a person or who stands in a relationship of parent-child with a particular person. Clearly that is the person in the first instance with whom the social worker must deal.

Some of the sections of the Act, such as section 18 and the section with which we are dealing in this Bill, can have far reaching consequences. For that reason I will revisit the question raised by Senator Tuffy. I hope I have reassured her that there is provision in the legislation which goes considerably further than either of us envisaged on Second Stage. That said, I am prepared to look at the issue of whether the guardian of a child would, in appropriate circumstances, at least be able to apply to the court for a hearing. The word “parent” is already used in the legislation and used without qualification as to status, be it by way of guardianship or the constitutional definition of the family or otherwise.

**Ms Tuffy:** I wish to respond to a couple of points. The Child Care Act 1991 is wrong if in certain sections it does not involve the parent of the child who does not have custody. That is a mistake. There is an inherent bias as to which parent gets custody and why the other parent might not. I do not say we individually have that bias but it is evident in court decisions historically and that is why we are in this current situation. The safety net is present in the legislation, with the provision that the court has the final say and the reference to its decision being in the child’s best interest. Looking for consent should not be a problem. It is not a case of looking for the consent of any relative, just that of the other parent. If the other parent cannot be found, the legislation provides a safety net. It is not just a question of notification — although that is provided as an option — consent is also involved. This is a mistake because of the way the system is designed and the legislation is framed. We may well be excluding possible options for the health board.

I am in favour of the legislation. We must provide for situations where the parent who does not have custody could play a bigger role but where the health board would not be aware of that. Given that we do not make the health board look for the other parent it does not need to inform itself of how beneficial the other parent might be in regard to the decision that may be taken or that he or she could have something worthwhile to contribute.

The Minister of State referred to the rules of the District Court. I do not know whether they are implemented. That raises the issue of whether the legislation could be challenged in terms of its constitutionality. I accept that applies to many different issues. The Minister of State also referred to the Constitution being an over-arching document and that the District Court must have regard to it. Perhaps if the Constitution were interpreted by a court it could conclude that

the non-custodial parent should not be excluded. Specifically on amendment No. 22, I do not fully understand how that section will operate in terms of the new section 43B and how it relates to section 37.

The section I wish to amend mentions any condition or restriction attaching to that order. Therefore, conditions or restrictions can be involved. They may concern access or conditions relevant to the parent who does not have custody. In particular, amendment No. 22 provides that the parent without custody should be able to state he or she wants an order varied or discharged and have an opportunity to explain why. This should be the case not only regarding an order but also regarding conditions and restrictions attached to an order.

A parent without custody may have a contribution to make and should be able to go to court to state he or she wants an order or a condition varied because as a parent he or she is able to act in a particular way or has a particular opinion. This issue is raised not only in this Bill. It is a general problem in legislation which we must examine.

**Mr. B. Lenihan:** The one point in dispute is that I do not accept the motivation of the 1991 Act was to discriminate against anyone. The Act clearly states the court must have regard to a person who is a parent whether under the Constitution or otherwise. The phrase “or otherwise” recognises every parent of a child irrespective of his or her status. It goes further than the generality of our legislation which tends to restrict the right-founded guardianship of a male parent who is not married. This legislation goes further in respect of parents.

Senator Tuffy invites me to put all of this expressly in the legislation. That would impose an obligation on a social worker to look beyond a person who has custody of a child or a person who appears to be a parent of a child and make inquiries on what other persons stand in a legal—

**Ms Tuffy:** What other parent?

**Mr. B. Lenihan:** What other parent? There could be—

**Ms Tuffy:** What is so bad?

**Mr. B. Lenihan:** A child could have a legal guardian who is not a parent. The legislation is silent on that issue and I intend to examine it. A parent may not be disclosed by the other parent, as Senator Tuffy suggested. That can arise. The more inquiries one imposes on a social worker, the slower the process of child protection will be. This is a reality we must face as legislators. The purpose of protection is to protect a child in a particular context. The child is cared for and pro-

[Mr. B. Lenihan.]

tected by the person who has custody of him or her or who stands in a relationship to the child.

We gave the courts a function to have regard to the wishes of parents generally in respect of children, and that is in the legislation. To go down the road Senator Tuffy suggests would mean writing into the legislation a positive obligation on the HSE to establish whether these parties exist. Inevitably that will add a further level of complexity to what is already an extremely difficult operation for all concerned. That said, Senator Tuffy has raised a serious question and I will examine it further.

Amendment, by leave, withdrawn.

Amendment No. 5 not moved.

Government amendment No. 6:

In page 4, between lines 24 and 25, to insert the following:

“(3) In determining whether a foster parent or relative has been taking care of a child for the period required by subsection (2)(a), any interruption of the placement during that period shall be disregarded unless the total number of days of interruption, whether consecutive or not, exceeds 30.”.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 7 to 11, inclusive, amendments Nos. 13, to 16, inclusive, and amendments Nos. 19 and 20 are cognate. Amendment No. 17 is an alternate to amendment No. 16 and amendment No. 18 is related. Therefore, amendments Nos. 7 to 11, inclusive, and amendments Nos. 13 to 20, inclusive, may be discussed together by agreement.

Government amendment No. 7:

In page 4, to delete line 25 and substitute the following:

“(4) The requirement of subsection (2)(d) as to”.

**Mr. B. Lenihan:** These are all drafting amendments consequent on the earlier Government amendment which necessitated the insertion of a new sub-section into the Bill.

Amendment agreed to.

Government amendment No. 8:

In page 4, to delete line 33 and substitute the following:

“(5) Subject to any conditions or restrictions”.

Amendment agreed to.

Government amendment No. 9:

In page 4, line 34, to delete “subsection (5)” and substitute “subsection (6)”.

Amendment agreed to.

Government amendment No. 10:

In page 5, to delete line 7 and substitute the following:

“(6) In granting the order, the court may impose”.

Amendment agreed to.

Government amendment No. 11:

In page 5, to delete line 11 and substitute the following:

“(7) Any consent given by a foster parent or”.

Amendment agreed to.

**Mr. Browne:** I move amendment No. 12:

In page 5, between lines 18 and 19, to insert the following:

“(7) Where a consent is given under subsection (6), the foster parent or relative of the child shall inform the Health Service Executive as soon as may be reasonable.”.

I raised this point on Committee Stage. The purpose of the Bill is to give foster parents more autonomy. However, even with these increased powers, foster parents should be obliged to keep a written record of any serious medical procedures the child requires. We will go from a situation where foster parents must inform the HSE to not informing it. A half-way house should exist.

Last week, the Minister mentioned a report on foster care. However, from speaking with foster parents I understand it is not strictly enforced. While what the Minister stated may be correct in theory, in practice it is open to abuse. It would be no harm to keep a written record of serious medical procedures or admissions to hospital for surgical or psychiatric reasons.

**An Leas-Chathaoirleach:** Is the amendment being seconded?

**Ms Tuffy:** I second the amendment.

**Mr. B. Lenihan:** The purpose of the Bill is to give foster parents or relatives caring for a child for a continuous period of five years more autonomy on the day-to-day care of the child. The HSE will continue to have a role in the life of a child in care through its involvement in the review of

the implementation of the child care plan. If foster carers need advice on a significant matter, they will continue to have access to a named social worker, known as a link worker, who will provide information, advice and support to them.

Senator Browne's concern is that decisions on medical matters can have a fundamental effect on the welfare of the child. In a sense, his amendment attempts to construct a half-way house between what is envisaged in the legislation and what is the present position. I am glad to state I can be of some comfort to him. Section 2(5) of the Bill enables the court granting the order to impose any conditions or restrictions it sees fit as to the extent of the authority of the foster parent or relative to whom the order is granted.

To address Senator Browne's point, the power given to a foster parent or relative can be the entire power the HSE had in respect of the child, including the power to consent to medical matters. However, the court can take a different view and restrict the scope of the power given to a foster parent. It might be appropriate in the case of an extremely ill foster child about whom fundamental medical decisions must be taken. The court might take the view in such a case the HSE should continue to have the final say and not the foster parent.

To that extent, the legislation addresses the Senator's concerns. A full blank cheque is not automatically given to a foster parent. The control of the care plan always exists. In addition, section 2(5) allows the court to give less than a full grant of power to a foster parent.

**Mr. Browne:** I accept the word of the Minister of State. However, I would be happier with written legislation. I am aware the foster care plan exists and in theory a record of what happens is written down. I understand that is not necessarily the case in practice.

Amendment, by leave, withdrawn.

Government amendment No. 13:

In page 5, to delete line 19 and substitute the following:

“(8) In the absence of a consent referred to in”.

Amendment agreed to.

Government amendment No. 14:

In page 5, line 20, to delete “subsection (4)” and substitute “subsection (5)”.

Amendment agreed to.

Government amendment No. 15:

In page 5, to delete line 25 and substitute the following:

“(9) Nothing in this section or section 18 shall”.

Amendment agreed to.

Government amendment No. 16:

In page 5, to delete line 30 and substitute the following:

“(10) Any arrangement that is in place or order”.

Amendment agreed to.

Amendment No. 17 not moved.

Government amendment No. 18:

In page 5, between lines 41 and 42, to insert the following:

“(11) Subsection (10) is without prejudice to the jurisdiction of the court to make, at any time, an order under section 37 with respect to access to the child or to vary or discharge such an order, including an order continued or varied pursuant to that subsection.”.

**Mr. B. Lenihan:** Section 37 of the Child Care Act 1991 relates to access to children in care. It provides that where a child is in the care of the Health Service Executive, either under a care order or otherwise, the executive will facilitate reasonable access to the child by his parents, any person acting *in loco parentis* or any person with a bona fide interest. It also provides that a person who is dissatisfied with the arrangements made by the executive may apply to the court and the court may make an order in regard to access and vary or discharge the order on the application of any person. The Health Service Executive if it considers it necessary to safeguard a child or promote a child's welfare can apply to the court for an order authorising the executive to refuse a named person access to a child in its care.

In the context of this wording, notwithstanding that subsection 2(10) provides that the new sections that are being inserted into the Child Care Act 1991 by the Bill are without prejudice to any other provisions of the Act which assigned functions to the HSE, I have considered the issue further and wish to propose a new Government amendment No. 18 which addresses the concern raised by Senator Tuffy in her amendment No. 17, already discussed, and inserts a new section into subsection (10). That provides that subsection (10) “is without prejudice to the jurisdiction of the court to make, at any time, an order under section 37 with respect to access to the child or to vary or discharge such an order, including an order continued or varied pursuant to that subsection.” This amendment will allow for new access arrangements to be made or existing access arrangements to be varied after an order under

[Mr. B. Lenihan.]

this section has been made and also brings into force by implication the standing of the various parties referred to in the original access section.

**Ms Tuffy:** I thank the Minister of State and his Department for producing an amendment which deals with the issues I had raised in amendment No. 17. I presume it will do so appropriately. If it does not, my Dáil colleagues will have an opportunity to deal with the matter further. I thank the Minister of State for accepting the point.

Amendment agreed to.

Government amendment No. 19:

In page 5, to delete line 42 and substitute the following:

“(12) This section and section 43B are without”.

Amendment agreed to.

Government amendment No. 20:

In page 5, to delete line 48 and substitute the following:

“(13) For the purpose of this section and section”.

Amendment agreed to.

**Mr. Browne:** I move amendment No. 21:

In page 6, between lines 5 and 6, to insert the following:

“(12) In this section, “missing”, in respect of a parent, means a parent who has had no contact whatsoever with either the child or the Health Service Executive for a continuous period of at least 1 year.”.

I am concerned about the lack of clarification with regard to the term “missing”. I can foresee this issue causing difficulty in future cases and it would be helpful if we clarified it in the Bill. The Minister has stated that the courts generally agree as to the meaning of “missing” but I wonder if this would withstand a challenge. If we were to copperfasten and clarify the matter in the Bill, it might help to prevent unnecessary legal battles in the future.

**Ms Tuffy:** I second the amendment.

**Mr. B. Lenihan:** We discussed this issue at length on a previous occasion. I am of the view that it is for the courts to decide, based on the information provided to them by the executive on the efforts made to contact the person, whether they are satisfied that the parent or other person is missing and cannot be found. Courts are used to conducting this exercise; it is part of their experience. We, as a Legislature, should not try

to fetter the courts too much in their explorations on this issue. We have supplied them with a concept, namely, “missing”. It is for the courts to determine whether a person is in fact missing.

To include a requirement that a person who has not contacted an official or officer at a health board for a year or any other period should be automatically deemed to be missing is not the answer. It is far preferable to give the court power to decide whether someone is missing because it can consider the entire file and make an independent, objective judgement on the issue. This protects the person who is missing far more than the insertion of a requirement that a particular period of time should have elapsed. Were we to insert that requirement, it is unlikely any person would know about it who is not in the administration of the HSE.

Amendment, by leave, withdrawn.

Amendment No. 22 not moved.

**Ms Tuffy:** I move amendment No. 23:

In page 6, between lines 18 and 19, to insert the following:

“(e) a person who, in the opinion of the court, has a *bona fide* interest in the child.”

I put down this amendment on Committee Stage. I argued at that time that the section as it stands was more limited than section 37(1), which allows a broader category of interested persons, for example, relatives of natural parents, to apply for conditions to be added to the order under the Bill. I ask the Minister of State to consider the amendment as it might be a way of dealing with the issue I raised in amendment No. 22. Section 37(1) of the principal Act states: “facilitate reasonable access to the child by his parents ... or any other person who, in the opinion of the board, has a *bona fide* interest in the child”. This Bill ties in the new sections 43A and 43B with section 37 of the principal Act, which allows for the type of person I allow for in amendment No. 23.

I do not understand why the category of “any other person who, in the opinion of the board, has a *bona fide* interest in the child” is allowed for in the principal Act but not allowed for in this Bill although section 37 is allowed for in the amending Bill. With regard to the new sections 43A and 43B, the Bill at page 5 allows that a judge might make an order with regard to section 37. The new section 43B on page six mentions conditions or restrictions attached to that order. That could include conditions that would have a connection with access, which is what section 37 of the principal Act is about. To be consistent the Minister should allow my amendment. It would allow for the parent who does not have custody, and would solve the problem I raised earlier, at least for this part of the amending legislation.

I previously raised the issue of grandparents. This is also related to the overall aim of the Bill regarding the types of consents that foster parents can give under this new legislation. Those consents can include the broader consents a guardian can give or they can be restricted. That is why the Minister is allowing for conditions and restrictions in the new section 43B. It is possible that, for example, a grandparent, parent who does not have custody or other relative could come forward and say that in certain circumstances he or she could have a role. That is why it is worded so broadly. If access comes in here, to be consistent the Minister should allow my amendment. What would be the harm? The court has a say and all the protections and safety nets to which the Minister has referred exist. Why not provide for these relatives in the legislation? The protections exist and the courts will do what is best, taking into account the welfare of the child and the background circumstances. There is information the court may need. A grandparent, parent who does not have custody or somebody who has a bona fide interest in the child may be able to say he or she wants an order discharged or a condition varied because he or she can contribute. The Minister should consider accepting this amendment. I do not see the problem with it, given it is already in section 37 of the principal Act, to which the Minister referred.

**Mr. B. Lenihan:** We have accepted it in the Government amendment.

**Ms Tuffy:** Sorry.

**Mr. B. Lenihan:** Senator Tuffy was probably not perusing the amendment when I read it out. The new subsection (10) has been added as a result of the Government amendment No. 18 in response to the Senator's earlier amendment and inserts the following: "(11) Subsection (10) is without prejudice to the jurisdiction of the court to make, at any time, an order under section 37 with respect to access to the child or to vary or discharge such an order, including an order continued or varied pursuant to that subsection." Senator Tuffy is talking about the discharge of this order.

**Ms Tuffy:** That amendment deals only with the issue of access.

**Mr. B. Lenihan:** Yes.

**Ms Tuffy:** My amendment No. 23 is not necessarily restricted to access. It is restricted to whatever one can do under section 43B. I am saying that more than the people the Minister has outlined—

**Mr. B. Lenihan:** Senator Tuffy argues that a person who has the right to be heard on access should have the right to be heard to discharge the entire order.

**Ms Tuffy:** It would not necessarily be to discharge the entire order. The Minister says one can use section 43B for conditions or restrictions. I understand what he is saying. Perhaps the issue of access is dealt with by his previous amendment. I accept that. I did not appreciate that at the time. I can see what the Minister is saying.

**Mr. B. Lenihan:** Senator Tuffy has achieved that. She is winning.

**Ms Tuffy:** I have achieved that and I appreciate that.

**Acting Chairman (Mr. Leyden):** Is Senator Tuffy pressing the amendment?

**Ms Tuffy:** I am pressing the amendment.

**Mr. B. Lenihan:** May I respond?

**Acting Chairman:** Of course the Minister may respond.

**Ms Tuffy:** There is still an issue. It is varying the order, not just discharging it and it could vary any condition or restriction. People other than the four types of people the Minister has listed could contribute something and they should be able to go to the court. The Minister has allowed for it in the Government amendment and the original legislation allowed for it. It would cover the role of grandparents or other people on access. I referred to access because I did not appreciate what the earlier Government amendment did. However, it may relate to the other aspects of the order and the conditions. Perhaps grandparents or other relatives who have a bona fide interest should have a say.

**Mr. B. Lenihan:** The bulk of Senator Tuffy's comments are addressed by the Government amendment on access. The principal Act's access arrangements are expressly provided in this legislation. That Parliamentary Draftsman was concerned that their implication was not sufficient on a matter as fundamental as access. As Senator Tuffy pointed out, it is an area where a wider range of parties is expressly recognised in the legislation. Senator Tuffy asks, given that this issue is addressed, why those parties do not have a wider right to participate in these proceedings. I return to the earlier discussion we had and make the point that under the Constitution and otherwise the courts and the HSE in exercising its functions under the legislation must have regard for parents. Senator Tuffy seems to lean towards giving a wide range of parties an express right to be notified of proceedings of this character.

Although I addressed this issue earlier in discussing the responsibilities of the HSE and its social workers under this legislation, I would like to put another consideration before the Senator. It has been my experience as Minister of State

[Mr. B. Lenihan.]

at the Department of Health and Children with responsibility for children that one of the great problems with children in difficulties before the court is that too many parties, and especially too many legal representatives, appear in these cases and that there is not enough focus on the need to provide services for these children. A great number of parties appear, whether under the guise of guardians *ad litem* or as their legal representatives, who purport to express a view on the welfare of the child without providing a service. It is my firm conviction that Government agencies, whether the HSE or the newly established Youth Justice Service, have to take responsibility for children and be heard on this subject. Many of the changes to the Children Act were directed to this end. I have reservations about the proliferation of parties appearing in cases in connection with children's welfare in the courts, especially when legal representation is engaged on their behalf. The bill for this is footed by the Exchequer. Money is paid to the legal profession, not diverted to where it is needed, to provide services for these difficult children.

**Ms Tuffy:** The Minister is correct. In my amendment I lean toward a broader category of person. I have particularly in mind parents without custody, grandparents and guardians. I still have a difficulty with this. The Minister said he would examine the issue in general. This section is not to do with notification. It gives a person the power to apply to the court to vary or discharge an order or particular conditions in that order. What if a grandparent, guardian or parent without custody could come the court and say that circumstances have changed and that he or she can play a bigger role in a child's life and wants the court to consider varying or discharging the order on that basis? I hope the Minister re-examines this as he said he would. We need to examine all these issues.

While much of what I am thinking of has a family law aspect more than a child care one, it is also relevant here. We need to examine the types of reforms being introduced. Australia introduced the Family Law Amendment (Shared Parental Responsibility) Act this year and it specifically defines grandparents as people who have custody, unlike Irish law. To allow grandparents we bring in the broad definition but do not specifically mention their role. Perhaps we should begin to specifically mention grandparents in our legislation and examine our definition of parent in order that we do not exclude any parent. The welfare of the child is always the paramount consideration.

I reiterate that I am not saying the motivation of this legislation or even the principal Act is to discriminate against anyone. However, there is an inherent bias in the legislation which emerges when we try to amend it. We are looking at the manner in which society was ordered in days gone

by, and we must examine modern realities instead.

**Mr. B. Lenihan:** I will look at the question, but let us talk about the best interests of the child. We are talking here about a child who has already spent five years in the care of a foster parent. Therefore the court has taken the view, either with the consent of the person who surrendered the child into care or having looked at all the circumstances in the light of a care order under section 18, that in its best interests the foster parents should now be able to make decisions in respect of the child. Then there is a care plan. The child is in the care of the State and supervision by the Health Service Executive, HSE, remains on foot of this. Now we are saying that we should foment litigation involving a remoter party to this particular transaction. I do not believe this is in the best interests of the child. Finality must be brought to the child's attachment as well, and that is a fundamental issue in legislation of this type.

That said, I am willing to look at the issues. Senator Tuffy has raised a fair point to the effect that while the legislation speaks of parents, under the Constitution and otherwise, and therefore has not been influenced by any social attitude or assumption since the time of its enactment in 1992, it does not deal with the question of guardians, and they have legal rights. These are not dealt with in the legislation in express terms, and there are other issues of that type which I am certainly willing to examine.

Amendment, by leave, withdrawn.

Bill, as amended, received for final consideration.

Question proposed: "That the Bill do now pass."

**Minister of State at the Department of Health and Children (Mr. B. Lenihan):** I thank Senators on all sides of the House for the welcome they gave the legislation. I appreciate the contributions made. On the detail of the legislation, two points were made by Senator Browne and Senator Henry, respectively, about the duration of time to which this order should apply. The discussion on that was very valuable because it served to bring up the nature and purpose of the legislation as well as its context.

Senator Tuffy tended to dwell on the question of the parties. She raised a general point which I will certainly examine further. We also had an opportunity to examine the detailed mechanics of the legislation. I know Senators were disappointed that other amendments which I had signalled were not tabled in this House. I understand that this was the subject matter of division in the House earlier. However, when those amendments are brought forward, they will come

back to Seanad Éireann for full discussion and I have no difficulty with that.

**Mr. Browne:** I thank the Minister of State, his officials and the other spokespersons in the House. I hope this Bill will ensure that both foster children and foster parents have a better lifestyle and greater autonomy in their daily lives, which is the main purpose of the Bill. Despite the country's accumulation of wealth and success in recent years, many problems still remain. Unfortunately, there are many children in foster care who will be taken into care by the State in future and it is vital to have the necessary legislation in place.

**Ms Tuffy:** I welcome and support the legislation. I thank the Minister of State and his staff for all the work they did and I appreciate his listening to the issues I raised and his assurance that he will give them further consideration. Obviously, I appreciate that some of the amendments I tabled were addressed by the Minister of State in Government amendments.

On a general point, while supporting the legislation, I want to pick up on the remoter parties issue. My main reason for tabling the relevant amendments was that, despite people's rights *per se*, those remoter parties, which could include a parent without custody, a legal guardian or a grandparent, might have something to contribute to the process which could help and perhaps even save the State money in the long term. If some such party could volunteer to play a greater role in the child's welfare, that would obviously be good from the State's viewpoint. It could be good too for the child and is something that should be taken into account. That was one of the motivating factors for my amendments.

This needs to be examined much more. Instead of saying the HSE might be caused greater inconvenience, we should ask whether such an initiative would help it more, broaden its outlook and help it make a better decision.

**Mr. Glynn:** Gabhaim buíochas leis an Aire Stáit. Tá an-obair déanta aige agus a chuid oifigigh agus gabhaim buíochas croíúil leo.

I sincerely thank the Minister of State. This is important legislation and he certainly has excelled in his capacity as Minister of State with responsibility for children. This legislation, as was agreed on Second Stage by Members on all sides of the House, seeks to protect children, to give those in difficult situations, such as broken homes, living conditions that are as normal as possible and such as might be enjoyed by children in more favoured situations.

I thank my colleagues on the other side of the House. This is again a clear example that a good, responsible Opposition complements good Government. This has been evident in the debate

on all Stages of this Bill and I am pleased to have been part of it.

Question put and agreed to.

### **Telecommunications Structures: Motion.**

**Mr. Finucane:** I move:

“That Seanad Éireann expresses its concerns following recent reports in relation to the proximity of telecommunications structures to domestic dwellings, schools, hospitals and child care facilities and calls on the Government to review the existing national guidelines in relation to the proximity of telecommunications structures to domestic dwellings, schools, hospitals, child care facilities, workplaces and amenities and empowers the Radiological Protection Institute to carry out monitoring of the emissions from telecommunications masts and other installations that emit ionising and non-ionising radiation.”

This motion was first tabled by Senator Bannon and has been on the agenda for some time. Anyone in rural Ireland knows that the greatest pressure from rural communities comes

*5 o'clock*

when it is proposed to erect a mobile telephone mast. There is conflict in respect of masts. When a mobile phone company decides on a particular location, it causes furor and there is a public meeting. The usual issues raised are devaluation of property, health concerns and the visual obtrusiveness of masts. Communities have a vocal lobby even in rural communities that do not have mobile phone coverage, where the strength and emotion of public feeling sometimes surprises me.

In County Limerick An Bord Pleanála is adopting a different strategy. On three occasions it upheld the council's refusal in respect of the erection of a mast. The main reason given was the visual obtrusiveness of the mast. The Government amendment to the motion refers to the WHO and health concerns. The jury is out on potential health risks of mobile telephone masts. As a result of the Planning and Development Bill in 2000, exemptions were granted to the planning process, particularly when the OPW is involved. Mobile telephone masts can be placed in Garda or Government buildings.

In Abbeyfeale a giant mobile telephone mast was erected. The people protested but I had to inform them that they had no way of protesting. Limerick County Council was not involved because it was erected by the OPW. The Commissioner of the OPW stated at a meeting last February that masts were a lucrative source of revenue.

We should consider the legislation in this case. In 2000, we sought to stimulate telecommunications activity and introduced this exemption in the planning and development code. There is one law for Garda stations and Government property and another for masts on private land.

[Mr. Finucane.]

I understand why communities are annoyed. Mobile telephone masts are visually obtrusive. Lip service is paid to the co-location principle by telecommunications companies. The mast erected at the Garda station may have antennae for transmitters, which the mobile telephone companies can access on a group basis. ComReg informs me that 4,505 masts have been erected, of which 250 are co-location masts. Co-location is not happening very often.

Nobody is putting the jigsaw together. There is a brief reference to mobile telephone masts in county development plans. County development plans should have a section devoted to telecommunications. Mobile phone companies should provide local authorities with an indication of priorities for location of masts.

In recent times an application for a mobile telephone mast in Kilmeehy was appealed to An Bord Pleanála. The mast would dominate the small village. A member of the community suggested placing the mast in a nearby forest, where it would not be visually obtrusive. In Norway, dead and growing trees are used to camouflage masts. There is overall a lack of coherent planning in respect of mobile telephone masts. There is a protest organisation which travels the country meeting people who protest against masts, including people who say they have been affected by the electromagnetic activity of the masts. When one listens to them, it is hard to dispute the bona fides of their experience.

Statistically a few people are prone to the effects of mobile telephone masts but there is no certainty on the health issue. I am a member of the Oireachtas Joint Committee on Communications, Marine and Natural Resources which is investigating this matter. I read recently of an objection to a mast in Dalkey, County Dublin, which was successful. The objector told a mast installer that in rural areas where there was a small population, a heavier density mast could be erected which would blast out over much of the area. I do not know what he meant by "blasting out". Is he referring to blasting out magnetic rays?

In the definitive document on mobile telephone masts Sir William Stewart in the United Kingdom advocated the precautionary principle while recognising that there is no certainty on the health issue. He believes that masts should not be located near primary schools because the electromagnetic emissions might affect young children. This motion refers to defining the distance from areas of population density, community centres and communities of houses and schools at which to erect a mast to obviate people's escalating concerns.

A person who allows a mast be erected on his or her land can arouse a wave of local emotion which can divide a community but may have been tempted by a substantial financial inducement from the mast operator. Will there be a forest of

masts throughout the country to accommodate 3G? In the United Kingdom the 3G licences were recently sold for £22.5 billion. This is big business. There are approximately 35,000 masts in the United Kingdom whereas we have 4,000. Does anybody know how many we will have in 2007-08?

I move this motion on behalf of people who are concerned about the erection of masts. Mobile telephones are a different issue on which medical research has raised many concerns. The Department of Communications, Marine and Natural Resources and local authorities should encourage co-location. In a small area near my home there are at least three different masts. There is no justification for that. It is irresponsible and unfair to the communities in that area that these should be erected beside them.

Such communities are entitled to their concerns because while the amendment tabled by the Department of Communications, Marine and Natural Resources may offer reassurance on the health issue, when I built a house not so long ago, I was told to install asbestos fire retardant in the garage. We know now, however, about asbestosis, especially given the claims about the basement of Leinster House. Who would have said 30 or 40 years ago that asbestos would affect people's health? It is now a serious concern in respect of lung cancer.

An EU directive was issued in 2004 in respect of magnetic rays and magnetic resonance imaging, MRI, to the effect that people should not be near these rays over a long period. The United Kingdom will implement the directive in 2008. I do not know when it will be implemented in this country but talks must be held with medical authorities about taking precautions when using MRI equipment.

The Government must take stock of the situation, hold consultations with the telecommunications companies, consider the virtues of co-location and think seriously about where these masts should be erected. It would be remiss of me not to raise this issue because I constantly go to community meetings, attended by members of the Minister of State's party, where we all voice the same concerns. I have researched the subject in detail, including the UK and Scottish experiences.

Scotland has scenery similar to that in Ireland but in 2001 it provided that there must be planning permission for every mast. Eight weeks is the timeframe for planning decisions here and in the United Kingdom but in Spain and Austria the timeframe for a decision on a mobile telephone mast is 180 days, allowing time for consultation. Here there is no matching between the Department, the mobile telephone companies and the communities involved which all work at different purposes. No mobile telephone company initiates consultation with communities before placing an application to erect a mast. The company enters discussions only when the community puts the

gun to its head asking that somebody meet it. The company then quotes scientific advice to allay the community's concerns and offers reassurance on health matters.

I would like the Government to examine this motion carefully in the context of structural changes that would allow for the proper use of this technology because I am not happy with the piecemeal approach it is adopting.

**Mr. Bradford:** I second the motion. I welcome the Minister of State from the Department of Communications, Marine and Natural Resources, Deputy John Browne, to the House to address this serious issue. I look forward to hearing his response and that of the Government.

In May or June last I raised this issue and was advised that the Government was studying the report of the all-party Oireachtas Joint Committee on Communications, Marine and Natural Resources, published some years ago, and would make recommendations in a few months. That period must have almost expired. Will the Government respond soon to this report?

While we recognise that communities throughout the country are concerned about this issue, in this era of modern telecommunications we must ensure the public is as well served in this respect as its European neighbours. When the EU ambassador to Washington, the former Taoiseach, John Bruton, addressed this House previously, he said this country must remain competitive and maintain its economic progress. Telecommunications plays a key role in that regard. However, there are genuine fears in certain areas where proposals have been made to erect more telephony masts.

It is almost an invisible enemy, difficult to quantify. Senator Finucane pointed out how asbestos was viewed when it first became widely used. In 40 years' time people might look back with a different perspective on telecommunications masts and ask why stronger action was not taken at the time.

It is important that the Government has a national policy on telecommunications masts because local authorities have varying responses to planning applications for them. There is no standard approach to the erection of masts and co-location. Should they be placed near town centres, schools or shopping centres? An Bord Pleanála is taxed with many appeals on planning applications for masts. The Government must respond to the report commissioned by the Joint Committee on Communications, Marine and Natural Resources. A Government policy needs to be put in place to ensure planning applications for a mobile telephony mast, whether they be in Cork or Donegal, are to the same standard.

When environmental issues are debated at protest meetings, certain phrases take on a great life of their own. Five years ago, one would never have heard the term "precautionary principle". It is now wisely used because people are concerned.

We must also strike a balance to ensure our ongoing economic progress. In many areas complaints relate not to a mobile telephony mast but the lack of a mobile telephony service. We must still respond to the fears about health issues. It is difficult to accept that mobile telephony masts would be positioned near schools, playgrounds or large centres of population. Even from a visual aspect they should be located in as isolated a place as is possible. The co-location argument is to the fore in several communities in north County Cork. Some townlands could end up with three masts. We must be strong in demanding co-location.

The Government amendment refers to the World Health Organisation and other reports. While they provide a scientific *carte blanche*, many communities find it difficult to accept. Further reassurances must be offered to these communities. The Government must be seen to have a strong national policy on the matter. The Minister of State is armed with the independent report commissioned by the Joint Committee on Communications, Marine and Natural Resources which contained sensible recommendations made on locating telecommunications masts. It gives him a mandate to introduce the report's recommendations.

People often inform their public representatives that the reassurances offered to them about the long-term health and safety aspects of living near mobile telephone masts are not strong enough. Where there are genuine fears, we must fully investigate them and put a mechanism in place to give more assurances. In ten or 15 years' time, the mobile telephony system may be entirely satellite-based. Currently, while the masts are a requirement, we must ensure they are located sensitively and in a reassuring manner. The Minister of State gave commitments several months ago to act on various reports on the matter. I hope he will fulfil them and a clear Government line is introduced shortly.

**Mr. Kenneally:** I move amendment No. 1:

To delete all words after "Seanad Éireann" and substitute the following:

"recognising that:—

- mobile telecommunications services play a pivotal role in the social and economic development of Ireland;
- the advice from international expert scientific and medical bodies, including the World Health Organisation and the International Commission for Non-Ionising Radiation, ICNIRP, states that the consensus of the scientific and medical evidence is that there are no adverse health effects from exposures below the limits set by ICNIRP, endorsed by the European Union under Council Recommend-

[Mr. Kenneally.]

ation of 12 July 1999 on “the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)”, (1999/519/EC) and adopted in Ireland;

commends the Government:

- on addressing issues outlined in the Oireachtas joint committee report by establishing an interdepartmental committee on the health effects of electromagnetic fields to advise the Government on appropriate actions in response to the Oireachtas joint committee’s report and to examine Government policy; and
- on ensuring there is continuing compliance with international guidelines on non-ionising radiation emissions from mobile telecommunications antennae.”

I have some sympathy with the motion but, unfortunately, if it were followed to the letter, the probability would arise that masts could not be sited anywhere. Regardless of where a mast is located, it will inevitably be close to a domestic dwelling. That is the nature of our countryside and the manner in which people have provided their homes with a view to staying in rural areas. That said, given the way planners act regarding the building of houses in rural areas, perhaps there may not be a problem in siting masts in such areas in future.

In any debate in this area we must err on the side of caution as the health and well-being of our children are concerned. As Sir William Stewart said on radiation, it often takes a long time for such contamination to become obvious. Certainly mobile telephone technology is still young and who knows what may be established through future long-term studies. For every expert there is a divergence of opinion. One medical expert will claim radiation is harmful, and will be supported in this by an engineer. Other professionals not only seem happy to promote mobile telephone use among the population but also seem content to use their own mobile telephones to the fullest extent possible.

Another international study, carried out by Dr. Roosli, stated the existing scientific knowledge is too limited to draw final conclusions on the health risks from exposure in the lower range. In other words, we do not yet know definitively whether non-ionising radiation is harmful; the jury is still out.

The term “radiation” is somewhat pejorative in that it is associated with illness, especially cancer. This particular dread may come from those films and documentaries made through the Cold War on the threat of nuclear fallout and the consequent widespread gamma radiation. While the word “radiation” strikes fear into people, it

should not be forgotten that both light and heat are forms of radiation and in moderate quantities are not hazardous to health.

Many homes, probably a majority, have a source of radiation which they use regularly. No one is fearful of the simple microwave oven because it is used in a controlled and protected fashion. Wherever there is even a suggestion of risk from a particular source or procedure, control is of paramount importance and can be the difference between public acceptability and not.

In 2000 a UK independent expert group on mobile telephony produced a report on the possible effects of radio frequency signals, now known as the first Stewart report. This review of all scientific evidence to date did not find any definite adverse health aspects due to mobile telephone. It did not conclude that there are none either. The group felt that because of children’s developing skulls and the likelihood they would have long lifetime exposure, they would be vulnerable to any as yet unknown health defects in adults. The group therefore recommended a precautionary approach to the use of mobile telephones by children.

I have expressed concerns in this regard in the past, with particular reference to the location of a mast in close proximity to St. Mary’s national school on the outskirts of Waterford city. At the time, I said it was disappointing that Ballygunner GAA Club allowed this mast to be erected without consultation with the local residents or school. There is much cause for concern about radiation emissions from mobile telephone masts and until those fears are allayed by concrete scientific evidence, we should not site them close to schools or health centres.

In this instance, the mast was erected without planning permission, although this was subsequently granted by Waterford City Council. This decision is being appeal to An Bord Pleanála and we all must await the outcome of due process in this regard. I understand the mast was burned down for the second time last Friday, and I am glad the local action committee has dissociated itself from this wildcat criminal action. Nobody can condone this kind of behaviour by any individual or group no matter how genuine their motives or how fearful they might be for public health.

In June 2005, the Oireachtas Joint Committee on Communications, Marine and Natural Resources drew up a report on non-ionising radiation from mobile telephone handsets and masts. One of its recommendations was that such masts should not be sited near health centres, schools, or other sensitive sites such as playgrounds or playing pitches. The Santini report had recommended the distance involved should be 300 metres. Disappointingly, there has been no progress on this recommendation.

The Opposition motion proposes that the Radiological Protection Institute of Ireland, RPII, should be empowered to carry out monitor-

ing of the emissions from telecommunications masts and other installations that emit ionising and non-ionising radiation. The joint committee too was of the opinion that the RPII should have its role expanded to include the matter of non-ionising radiation. The committee also came to the logical conclusion that the expansion of the role of the RPII would have an impact on that organisation. It pointed out that the RPII does not have a developed or natural expertise in non-ionising radiation and that it would require additional staff to enable it carry out its expanded role. To address this, the joint committee made the recommendation that the RPII be appropriately staffed to accommodate its expanded role and that staff with relevant expertise working elsewhere in the Civil Service could be assigned, subject to the usual industrial relations protocols, to work in the institute.

It is essential we collect as much information as possible through independent, reliable sources. As we can see from the regular stock exchange dealings for the various mobile telephone services, it is a multi-billion euro industry and one which is unlikely to produce the type of information the legislators and public require and deserve if there is to be reasoned, responsible debate and necessary, if unpopular, decisions taken.

We should not lose sight either of the possible negative effects of the use of cordless telephones and wireless Internet access, although it is generally a personal decision on the part of users to avail of those services. We might also take into account in our quest for information the possible effect of the creation of wireless Internet zones of the type normally found in airport waiting lounges, some hotels and even in small coffee shops, mainly abroad but likely to extend to Ireland. We need to know also whether this technology is harmful, whether it equates in strength or effect to the mobile telephone technology and what its long-term effects might be.

We have a long road to travel in this debate but, for now, we must protect young and vulnerable people, while not stifling the growth or operation of what has become a vital accessory in modern Ireland. I am pleased the Government has established an interdepartmental committee on the health effects of electromagnetic fields to advise on appropriate actions in response to the joint committee's report. I commend the Government's amendment to the House.

**Mr. Norris:** I am not at all technologically gifted but I wish to make several comments on this motion. My first observation relates to the way in which these motions are generally framed. In this instance, this side of the House — in which I include myself although I am an Independent rather than Opposition Member — has raised an issue about which, as I am sure the Minister of State, Deputy Browne, is aware, there is considerable concern. I regularly receive agitated let-

ters from people, both in my constituency and in other areas throughout the State, who are suddenly faced with the installation of a telephone mast or similar installation. Some people believe they are made seriously ill by these installations. Not all such claims may be correct because some ill effects may be psychosomatic. However, the Minister of State knows well that 1% of people are what is described as electro-sensitive and that there is no doubt such persons are in danger from these types of developments.

As usual, however, the Government has deleted the entire text of the Opposition motion after "Seanad Éireann" and proceeded to praise itself. This approach is ludicrous and entirely childish. Moreover, it is proof we are on a slide towards an election and that the Government is unlikely to take effective action on any matter. Instead, it praises itself for dealing with issues it has not addressed and for establishing a committee. The gentle persons in government have done well. The Government expresses its concerns and pledges to tackle this issue head-on by establishing a committee. This is not good enough in view of the genuine concerns of those affected by this issue. The Taoiseach and the Minister are aware there is a considerable level of anxiety about this matter. So too is the Minister of State at the Department of Finance, Deputy Parlon, who was picketed in Dalkey by a group of people who are not keen on this type of development.

The Green Party's Deputy Cuffe raised this issue in the Dáil last May. It is worrying that in his reply, the Minister, Deputy Roche, accepted that telephone companies enjoy certain planning exemptions. We must address this regrettable situation. If we are concerned about the welfare of citizens, it surely should be the case that where the public has concerns about new technologies, such developments should be subject to planning controls.

I have a personal and anecdotal basis for some of my concerns in this area. As a news addict, I carry a small transistor radio on which I listen to the news using a set of earphones. I often listen to it as I walk through Leinster House, as I did just now, hoping for news of further success for the Democrats in the United States elections. As I pass through the corridors, I invariably hear all types of whizzing noises, bleeps, expletives, pious ejaculations and so on emitting from various types of machines.

This building contains sophisticated communications systems, including computers and other devices the names of which I do not know. It is obvious they are emitting radiation and that we are passing through enormous fields of radiation. If the interference is enough to blast my small transistor radio off the airwaves as I pass through the corridors, there is no doubt it is going through our poor, limp bodies and may well be doing damage. This radiation is assumed not to be there because it is unseen but I am aware of it from the simple and not entirely scientific test of walking

[Mr. Norris.]

through the corridors of Leinster House as I listen to my transistor radio.

In the light of the concerns that have been expressed in this area, and the well advised interest taken by Fine Gael in particular, it is simply not sufficient to say a committee has been established to examine the issue. We already have the report from the Oireachtas Joint Committee on Communications, Marine and Natural Resources. What is the point of establishing committees of the Oireachtas if we do not trust them? The joint committee recommended that the planning guidelines to which I referred should be amended to ensure mobile telephone masts are not located near schools, playgrounds or health centres, which are peopled by vulnerable groups. However, I understand this has not been done. Perhaps it is another of this committee's reports that is being kicked into touch.

There was a criticism from the Oireachtas Joint Committee on Communications, Marine and Natural Resources that the agency in charge of monitoring radiation does not even know the number of telecommunications masts. It does not suggest there is a high or active level of monitoring if the agency charged with monitoring does not even know how many masts exist.

A submission from the Irish Doctors' Environmental Association indicated that 1% of the population is electro-sensitive and, as a result, feels unwell when close to electricity or radiation. Does this group not have the right of protection? There must be a balance in respect of users. Unfortunately, one cannot set the clock back in terms of telephones and there is a demand which must be served. Unfortunately, the market prevails but the balance must be such as to include the welfare of people who are electro-sensitive.

**An Cathaoirleach:** The Senator has one minute remaining.

**Mr. Norris:** In that one minute, I will ride my hobby horse. The telephone companies should be regulated as well. They have got away with murder. While I know this is not directly relevant, it is disgraceful for a Fianna Fáil-led Government to accept that Irish citizens should still pay line rental to an Australian investment company for a line laid by the Irish taxpayer. One cannot get through to a person on a telephone; it is all robots. One is then told one's conversation is being tape-recorded for educational purposes. I used to get paid for educating people in the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin and I see no reason people should have an unlicensed right to tape-record my telephone conversations.

My final point may not be relevant but it is quite surprising how the most irrelevant things one says in this House travel in the right direction and have some effect so, therefore, I am not really repentant about it. I refer to the banks and

the way they treat their customers in regard to telephones. We are all forced to withdraw our money from ATMs on the street but there are huge queues at them. The reason for these is that all our migrant workers and foreign guests, who are very polite, queue up to top up telephone credit. The banks are so mean that it is not enough that they swindle and scam every customer they have, they then force people out on to the street in the wind, rain and sleet to get their money out of ATMs. People must queue because the banks get another few percentage points from the telephone top-up facility. Let us look at the entire telephone industry while we are at it.

**Mr. Daly:** I appreciate the opportunity to comment on this debate and the amendment to the motion which I broadly support. It is a timely debate because there has been widespread unrest at some of the developments taking place in my constituency and in some of the country areas, especially adjacent to schools, play areas, hospitals, etc. While no major problems have been identified to date from emissions from the transmitters on these masts, there is a general belief that they have a detrimental effect. It is almost impossible to convince local communities that they do not do damage.

At a recent meeting I attended about a proposed mast in the area in which I live, there was much adverse comment. However, the proposal was withdrawn at the request of the landowner. For many years people did not seem to have a great problem with passive smoking and it did not create any major controversy but suddenly tobacco smoking was associated with cancer and we all know how that developed. There is a belief in the communities in which I have been involved — unfounded or otherwise — that these masts will eventually damage people's health and welfare and that they are particularly damaging to children, especially where they are adjacent to schools and recreation and leisure areas.

There is also a commercial aspect in that the location of masts adjacent to areas in which there is widespread housing has had a detrimental effect on the value of property. If somebody pays €500,000 for a house, which happens in many towns, and finds a mast located next door which will possibly reduce the prospect of selling that house, he or she has a legitimate concern that this development is detrimental to his or her economic stability or otherwise. This is a cause of much concern, certainly in many of the areas in which I have been involved over the years. The underlying fear is the effect it will have on property values and the fact it might damage the prospect of selling a house and moving. For that reason, this debate is timely.

It is important to use an opportunity such as this to convince the public, as is being done in the amendment, that all the scientific research has been provided. I saw some of the documentation connected with this from various professionals.

The difficulty is that one finds professionals arguing on both sides of the argument. All the available material and research done nationally and internationally, especially in Europe, shows there is no major health risk arising from these masts. However, how does one convince the public of that? The public is not convinced, especially in Ennis.

Last July I attended a protest march in Ennis against the proposed erection of a mast by the Electricity Supply Board. The local council refused permission for it which is where the dilemma arises in many cases. Where a local authority refuses permission and the body concerned appeals the decision to An Bord Pleanála, evidence suggests that the board, by and large, overturns the local authority decision because of the necessity for economic development and good communications networks. In some cases, it has not done so but in most cases where councils have refused permission, having taken into account the views of local councillors and others, the board has overturned the local authority decision on appeal.

This is the case in Ennis and it is causing widespread anxiety for a large number of people living adjacent to the town and the bypass. They cannot understand why the Electricity Supply Board, which is involved in this development, cannot find an alternative site away from the built-up area. One should also bear in mind that it is adjacent to the new bypass and that hectares of land will be neutralised because of the bypass and it would be possible to find an alternative location for the mast away from dwellings, schools and Cahercalla hospice, which is quite close to it.

Attempts to date to convince the public it will not be detrimental to health and the value of their property have been unsuccessful. We have had several meetings attended by the ESB and the local community. Although we had a very useful discussion, we could not reach a compromise. What bothers me about the particular development in Ennis is that although there will be a judicial review, the ESB has notified local people that one way or the other, it proposes to go ahead with the erection of the mast and that if the judicial review determines that it should be taken down, it will do so then. That is a negative way to approach this issue and I appeal to the board of the ESB to refrain from erecting the mast until such time as the judicial review is heard. If it does not do so, it is quite likely an injunction will be sought to prevent it proceeding with the erection of the mast until the promised judicial review is heard.

It is a complex matter and I do not believe we can find a resolution to it tonight. In the course of a meeting I attended regarding masts, three or four mobile telephones went off. This brought home to people that although they objected to the erection of telecommunications masts, they were all dependent on them to an extent for their communications needs. If people could be con-

vinced that their health and that of their children will not be damaged, one could certainly proceed. If the public can be convinced that the erection of such masts will not in some way undermine the value of its properties, land and expensive houses, agreement for them might be achieved.

However, in the present climate, there is a range of problems. For example, widespread problems exist in Moveen, which is near Kilkee, Ardnacrusha, which is near Limerick and Ennis. The publication of the report from the inter-departmental committee, which is expected at the end of this year, will be timely. I recommend that Members should wait until its arrival before following up this matter further.

**Mr. McHugh:** I welcome the opportunity to speak on this issue. I agree with Senator Daly that our confidence in the systems around us is not as advanced as one might wish. As we live in a society with advanced telecommunications systems and information technology, we must embrace change and while so doing, we must embrace new technologies. There are obvious benefits to the forthcoming new technologies. For example, coastal areas that rely on coastguard emergency response units or Royal National Lifeboat Institution units cannot live without instantaneous telecommunications systems.

However, the new telecommunications systems also have drawbacks. For example, it has been noted recently that boy racers are able to use technology to anticipate the location of checkpoints. Such challenges posed by the new systems must be considered. Moreover, given the presence in the Chamber this evening of the Minister of State at the Department of Communications, Marine and Natural Resources, Deputy John Browne, Members have a unique opportunity in respect of drift-net fishing. While I do not wish to raise the entire debate again, I refer to poaching. As the Minister of State is aware, advanced telecommunications systems contribute to an extremely healthy and fruitful poaching business. One of the real issues with which Members must contend is that units of sub-aqua professionals are on stand-by, ready to enter rivers to poach and use telecommunication systems to do so.

While I digress from the present debate, I am glad the Minister of State is present because in any debate regarding salmon, a sharp focus should be kept on this matter. However, this aspect was lost in the past couple of weeks. Anecdotal information I received last weekend suggests the operation of a slick, professional poaching outfit. Such poachers do not enter rivers to take 50 or 60 salmon, but to take a couple of hundred salmon and can do so within a few hours. This issue must be addressed.

**An Cathaoirleach:** While I appreciate the point made by the Senator, we are drifting sideways somewhat.

**Mr. Finucane:** The Senator is discussing telecommunications.

**Mr. McHugh:** Naturally there are fears regarding masts and structures if people live in urban areas in which a national school is near a Garda station with such telecommunications infrastructure. One of the most significant reasons for such fears is that masts are erected without any form of communication with the local community. There is no contact with the people before such masts arrive, which leads to a barrier straight away.

I will cite another example regarding North West Electronics. The Minister of State will be aware of the positive elements of the group broadband schemes. An article in *SiliconRepublic.com* states that group broadband schemes have been an abject failure. While that may be the case nationally, North West Electronics, an energetic private company in Donegal, has been rolling out an expansive group broadband scheme. It uses masts and the telecommunications antennae required for such infrastructure. They do so in two ways. First, they locate such masts away from population centres. Second, it has embraced the positive measure of consulting local communities. It asks people what would be the prime locations for such masts from the perspectives of topography and sensitivity in respect of distance from population centres. This is the kind of best practice on which Members should focus. Moreover, when dealing with the public, other private companies could learn a lesson in this respect.

When the past four or five years are considered, O<sub>2</sub> and Vodafone may ask why there was such a revolt in rural areas. County Donegal lacks widespread telecommunications or telephone cover because of people's objections. However, the main reason for this is that the companies arrived without contacting the local communities. The lesson to be learned regarding telecommunications infrastructural investment is to contact the local people first and get them involved from the outset. I know of no one in a rural area who does not want advanced communications systems.

Many difficult questions must be answered regarding an integrated approach on the part of State bodies. On one hand, Donegal, Leitrim and Cork county councils may be working in one direction, while on the other, health boards may require their own telecommunications to provide for their emergency response units. Although RTE possesses the prime locations, it charges local authorities and emergency response units. In other words, one branch of the public service sector charges other sectors of the public service. Difficult questions must be answered in terms of value for money and the integrated approach. Lessons could be learned from the approach adopted by O<sub>2</sub> and Vodafone, which share masts. This also must be done at a State level and the

subjects of value for money and integration must be examined. A better managed system in terms of mast-sharing should also be examined. Perhaps a more comprehensive roll-out in a more imaginative manner than obtains at present might follow.

I thank the Cathaoirleach for permitting my digression in respect of salmon. I appreciate it.

**An Cathaoirleach:** The Senator did so in a cute manner.

**Minister of State at the Department of Communications, Marine and Natural Resources (Mr. J. Browne):** I thank Members for their contributions to the debate. I even include Senator McHugh's contribution regarding salmon. I am sure the House will return to that issue on another day.

Mobile telecommunications services play a vital role in the social and economic development of Ireland. The deployment of advanced telecommunications infrastructure, including the latest generation of mobile telephone networks, is critical for Ireland's competitiveness. The quarterly report of the Commission for Communications Regulation, ComReg, of September 2006 shows there are 4.37 million mobile subscribers in Ireland. There are now more mobile telephones in operation than people in Ireland, with a penetration rate of 103%. In that quarter there were more than 1.7 billion minutes of mobile voice calls; almost 1.5 billion SMS messages; an average of 114 SMS messages per subscription per month; and almost 7.7 million multimedia messages. These statistics highlight clearly the importance of the mobile telephone in Irish society today.

However, I am always aware of the concerns people raise regarding the potential health effects, if any, of the use of mobile telephones and the base stations required to build efficient and effective, national networks. I acknowledge that real fears exist among certain parts of the community in respect of the health impacts of such networks. I am sympathetic to and understanding of such fears and the concerns that underpin them.

While being cognisant of these concerns, the Department is also responsible for policy regarding the development and promotion of wireless communication technologies for the benefit of Ireland. It constantly seeks the most accurate, expert and up-to-date information on any potential health risks of these technologies. My Department is guided in these matters by the advice from international expert bodies, such as the World Health Organisation and the International Commission for Non-Ionising Radiation Protection, ICNIRP. These bodies continually examine the totality of the scientific and medical evidence available so we have the most up to date and accurate information in regard to the potential health effects, if any, of electromagnetic fields.

6 o'clock

My Department participates in the process of scientific review and the setting of standards, working with the World Health Organisation and other bodies such as the International Commission for Electromagnetic Safety, to ensure that the technologies we use are safe. The World Health Organisation co-ordinates scientific research on an international basis through its EMF project, to which Ireland contributes, and periodically publishes environmental health criteria documents analysing the most up to date research. I am advised that the World Health Organisation is currently preparing an environmental health criteria report on the radiofrequency electromagnetic fields used by mobile telephony. ICNIRP is an independent body comprised of leading international medical and scientific experts. It works closely with the World Health Organisation and continually examines the available scientific medical evidence to set limits for the protection of the public.

The international scientific and medical consensus is that no adverse health effects have been demonstrated to have been caused by electromagnetic fields, such as those emitted by mobile phones and telecommunication masts below the limits developed by ICNIRP and endorsed by the World Health Organisation and European Union. These limits have been adopted in Ireland and are enforced for mobile and other telecommunications services, as appropriate, by ComReg, the regulator, which audits approximately 100 sites annually. In 2003 and 2004, ComReg conducted, in liaison with my Department, an audit of 401 sites. No site audited to date has been found to breach the limits and most measurements are typically less than one-thousandth of the limits. To date, over 12% of sites nationwide have been audited.

Planning permission is generally required for communications masts. I am advised by the Department of Environment, Heritage and Local Government that the Planning and Development Regulations 2001 set out certain exemptions in this area. These include, subject to certain conditions, the attachment of additional antennae to an existing antenna support structure; the erection of an antenna support structure in place of an existing antenna support structure; and the attachment of antennae to certain existing structures, such as telegraph poles, electricity pylons and certain public or commercial buildings.

The demand for additional antennae arises from the expectation of the public to be able to use its phones anywhere and at any time. Where the demand for services is high, a large number of base station antennae, each serving a very small area, are required. These are mainly required in towns and urban areas and particularly in the commercial areas. The Department of Environment, Heritage and Local Government published guidelines for planning authorities on telecommunications antennae and support structures in 1996. These guidelines facilitate planning

authorities, An Bord Pleanála, the licensed providers of mobile telecommunications services and the public by providing guidance on dealing with these developments within the planning system.

The guidelines set out a locational hierarchy in respect of the siting of radio masts and advise that free-standing masts should only be located within or in the immediate surrounds of smaller towns or villages as a last resort. If such a location should become necessary, the masts and antennae should be designed and adapted for the specific location. In the vicinity of larger towns and in city suburbs, operators should endeavour to locate in industrial estates or in industrially zoned land.

The guidelines further advise that free-standing masts should only be located in a residential area or beside schools as a last resort and if all the alternatives are unavailable or unsuitable. Under section 28 of the Planning and Development Act 2000, planning authorities are required to have regard to any ministerial guidelines in the performance of their functions. The health concerns of some members of the public were highlighted in the report of the Oireachtas Joint Committee on Communications, Marine and Natural Resources on non-ionising radiation from mobile phone handsets and masts, which was published in June 2005. This report made a number of recommendations about the continuing safety of mobile phones. Among these recommendations were that the Radiological Protection Act 1991 be amended so that the monitoring of non-ionising radiation would be within the remit of the Radiological Protection Institute of Ireland, RPII; that an independent board be appointed to review the published scientific data from the Irish perspective; the setting up of a non-statutory-advisory mobile phone safety users group; that no mobile phone handsets should be allowed for sale in Ireland unless they are certified as complying with the ICNIRP standard; that results of emission testing on masts and antennae be published on the websites of the Department of Communications, Marine and Natural Resources, the RPII and ComReg; and that planning guidelines and planning exemptions be examined with a view to ensuring that no electromagnetic emissions or radio frequency emissions-emitting equipment is permitted to be sited near health centres, schools or other sensitive sites such as playgrounds or pitches.

The Government set up an interdepartmental committee in September 2005 to report on appropriate actions on these recommendations and examine Government policy with regard to any potential health effects of electromagnetic fields, if any. My Department is chairing this committee, which includes representatives from the Department of Environment, Heritage and Local Government; the Department of Health and Children; the RPII, the Health and Safety Authority, the Environmental Protection Agency and the Office of the Chief Science Adviser. In an effort to ensure it has the most up to date scien-

[Mr. J. Browne.]

tific and medical evidence available to it, the committee has established an expert group to prepare a report on the potential health effects of electromagnetic fields. This report will provide both a comprehensive review of the latest scientific evidence and international consensus in regard to the potential health effects of electromagnetic fields and recommendations on policy options based on this scientific evidence.

The expert group is chaired by Dr Michael Repacholi, the former co-ordinator for the radiation and environmental health unit in the World Health Organisation. In addition, Dr. Eric van Rongen from the Health Council of the Netherlands; Dr. Anthony Staines from the faculty of medicine, University College Dublin; and Dr. Tom McManus, the former chief technical adviser to my Department, have participated in the group. The group brings many years of knowledge, expertise and experience to play in the provision of independent and impartial advice. Covering many of the diverse specialist areas required to interpret and assess the multitude of international research studies, their combined experience will prove of great benefit to the work of the interdepartmental committee and to Ireland. The group is now finalising its report, which will cover all aspects of potential health effects of electromagnetic fields, including radio-frequency fields used in mobile telephony, extremely low frequency fields used for electricity power distribution, static fields used for medical imaging, potential risks to children and the question of whether some individuals may be sensitive to these fields.

As part of its review, the expert group sought submissions from individuals, local authorities, industry and concerned citizens' groups. These submissions provided the group with the key relevant questions raised by the respondents. It met with representatives of some of these in February 2005 where further information was sought by the expert group regarding the issues faced from an Irish perspective.

The issues raised with the expert group included the question of how the Government and key stakeholders can communicate the potential risks more effectively, the medical and scientific basis for the condition known as electro-sensitivity, the scientific basis for the ICNIRP guidelines, whether a minimum distance should be set for locating antennae near facilities such as schools and hospitals and the research and international participation that should be undertaken by Ireland in this area. This information has allowed the expert group to address its report to specific concerns of the stakeholders, including the Irish people; to ensure the important issues can be fully addressed; and to include answers to those questions that have been raised by the public. It is not possible to present the recommendations of the interdepartmental committee

at this time as its work is ongoing and is not due to be completed until the end of the year.

I recognise that the issues raised here today are important. I am conscious that my Department is responsible for the development of communications infrastructure. However, at the same time, my Department is also responsible for advising the public of any potential health risks of electromagnetic fields arising from this infrastructure. This creates a potential conflict of interest within my Department. I am satisfied that the advice I have received to date is unbiased and the most accurate available. However, given the potential for a conflict of interest, an independent source of expertise and advice outside of my Department would be preferable.

The motion calls on the Government to empower the RPII to carry out monitoring of non-ionising radiation emissions. The report of the Joint Committee on Communications, Marine and Natural Resources has also recommended that responsibility for non-ionising radiation matters must be given to the institute. The institute has statutory responsibility solely for matters pertaining to ionising radiation. I recognise the benefits in having an independent one stop shop for the public to access all relevant expertise and advice in regard to ionising and non-ionising radiation. Though these are separate issues, the dangers of ionising radiation are real and proven and many of the necessary skills regarding communication with the public could be shared resources.

The Minister, Deputy Noel Dempsey, and I eagerly await the publication of the expert group's report and the outcome of the interdepartmental committee's deliberations. The Government will be then in a position to make a decision on how to ensure that, going forward, the Government and the public can receive the best, most impartial and expert information on these matters.

**Mr. O'Toole:** I welcome the Minister of State to the House and thank him for his contribution. It is important we discuss this issue although I do not understand why the Minister of State did not simply accept the motion. There is very little in it to which he could be opposed and he could have made a minor amendment to it if an empowerment provision needed to be included. There is very little in it that would cause a problem for the Government.

It is important to amend the guidelines because we need to give ordinary people confidence in regard to this issue. People are all over the place in dealing with it. They do not understand it and because of that they are worried, and because they are worried, they oppose proposals in regard to it. It will be a mistake for the House to divide on this motion tonight. It was a mistake by the Government side to oppose it. If minor amendments were required, they could have been made through negotiation and discussion.

The reality is that every change of significance in society confuses people and leads them to react against it. When the first motor cars came on the scene, a motorist was required to have a person walk ahead of the car carrying a white flag to indicate a car was approaching and for people to take care. Concern has been expressed about every social development. When I was young, I remember a debate such as this on the danger of radiation from luminous watches. It was said at the time that they would radiate the country. It was predicted that we would all die from radiation emitted from luminous dials on our watches. It was said they would exude radiation, but nobody has died as a result of their introduction.

When mobile telephones came on the market prior to concerns about telecommunication masts, it was said we would all develop brain cancer and that our ears would be affected. There were copious acres of newsprint on this issue. The problem with these issues is that the debates on them gain legs until such time as issue no longer has any impact.

It was right for Fine Gael to table this motion. We could all have said that if there is a problem, we will find out what it is, advise people — who are genuinely concerned about the issue — of all the information we have on it and let them make up their own minds. That would have been a confidence building measure, which would have been hugely important.

We are discussing an area that is very transient. The Taoiseach made a comment at the weekend that broadband would be connected to every single house, although he did not say when that would be done. I am not sure how broadband will be provided but more than likely some of it will be provided via satellite. Masts will be obsolete in a short period. The first time we discussed the 087 system in this House, which must be ten years ago, I asked why we were going to the bother of erecting masts and why we did not simply use a satellite system. Such a system is now available to people who travel all over the world and people giving news reports from the middle of a desert or elsewhere can tune into a satellite and use it. It enables global coverage. Prices have come down and it now costs less than a dollar a minute to use a satellite telephone and that is the future for this industry.

What we are discussing will become irrelevant. No doubt somebody will say the satellites will fall on top of us, drop poison on us, radiate us out of existence or whatever other story a next news editor or features editor, with a gap to fill on a Tuesday morning, decides to include in a newspaper. Our job is to simply reassure people. I do not believe there is a problem with the masts. However, that means nothing as that is simply my personal view. If somebody asked me to prove that, and I suspect this is the point of the Fine Gael motion, I could not prove it. If I were asked how I know that, and told I am wrong, I could not

produce the chapter and verse on it. However, I would like to be able to say that this is an issue about which public representatives are also concerned, that we have examined it and the general view of all parties is that all the information on it should be available to all the people. In that sense, we should do what Fine Gael is asking for tonight. If the Radiological Protection Institute is not the appropriate body to do what is proposed, we can agree on another body to do it. The Fine Gael motion is not tied into one issue in that if a person put forward an amendment to the effect that some other body should do what is proposed, I believe it would have been accepted.

It is six or seven months to an election but the wording of the amendment to the motion in commending the Government and so on has changed the motion beyond recognition. Under genuine Standing Orders, this amendment would not be acceptable because it is a direct negative of the motion. I know that does not happen any more. The amendment is a direct negative in that it proposes voting against the motion. It does not make sense. It does not help any of us on any side of the House. We should simply do what is required. If Members in their contributions want to commend the Government, that is fine. There is no doubt much work has been done by the Government in this area. I do not deny that and I have no problem with it but it is not the issue with which we are dealing.

We are totally dependent on mobile telephones. Many people object to the siting of masts, but there is an element of hypocrisy in this respect. For example, people give interviews on mobile telephones complaining about the masts that are driving the technology to enable the interview to take place. That is happening throughout the country. There is a double think on this issue. I do not know the answer but we had a way tonight of finding it. In fairness to Fine Gael, it did not attack the Government in the motion. It simply expressed the concern of the House about this issue. The motion does not drive a shaft into the heart of Government. I thought the wording was reasonable and that it could have been accepted.

I will not take up the time of the House any longer on this issue. Mobile telephones are an essential part of our communications and infrastructural systems. They are crucial to all businesses and people in all walks of life. They are essential for the security of children and people travelling alone. We would have difficulty living without mobile telephones now. I am not talking about so-called nerdy people but people who use them in all walks of life. Mobile telephones have brought reassurance and protection to many people.

We are all committed to mobile telephones. The calls must be transmitted in some way. It is being done currently through masts. If there is a problem with masts, we must be told about it. We can deal with it by simply putting the whole

[Mr. O'Toole.]

system on satellite. There is no difficulty about doing that. In fact, it is much easier. With one geostationary satellite we would have a footprint for the whole island. We should take up the space for that and deliver it on that basis. It could be done easily.

I support what Fine Gael is trying to establish in this motion, which is to obtain the necessary information to reassure people. I ask the Government, even at this late stage, to consider not pressing its amendment and to support the motion.

**Mr. MacSharry:** I wish to share my time with Senator Dooley.

**An Cathaoirleach:** The Senators will each have four minutes.

**Mr. MacSharry:** Along with other Members, I welcome the Minister of State to the House. I am glad to have the opportunity to make some points on this issue. I agree with Senator O'Toole, and there is much agreement on this issue. No Member would say there is not genuine concern about the possibility of health risks when it comes to radiation from masts and pylons, and I am not saying there is not. I support the amendment, which I second if it has not been formally seconded.

The main truth in the debate came from Senator O'Toole, in that a frenzy of fear is generated every time a mast is erected in an area. I was party, as was Senator Finucane, to the joint committee report on this issue. It came up with a number of recommendations which the Minister of State has acknowledged. His expert group is now determining the actions that can best be taken in line with the recommendations in the report.

The bottom line on this issue is that the World Health Organisation indicates that there is nothing to suggest within the criteria it recommends that such structures are damaging to anybody's health. Equally, there would appear to be nothing to guarantee or state conclusively there is not. In the meantime, while the expert group is determining what actions are to be taken and while we are monitoring best practice, we have been somewhat negligent in getting the facts as we know them out there. This would put many people's minds at rest. I am interested to see what the scientific research produces, and whether there is a conclusive finding one way or another. One can well ask what could come from a mast that does not come from a hair-dryer when we hold it up to our head, or from a microwave oven when something is being heated at a high temperature? We have so many different appliances around our homes which are essential to our lives that it would provoke a major outcry were we to suggest hair-dryers were to be removed from the

market or microwave ovens could not be used in the home.

We should view these issues in perspective. Perhaps what we have failed to do heretofore is to make the information we have available, namely that the World Health Organisation states that, provided we operate to its criteria, there is not a major problem. Notwithstanding that, we could do better in terms of other issues relating to masts. I acknowledge what Senator O'Toole stated in regard to satellites. We may end up going that route. Each local authority should select a number of sites where masts can be best placed and then, effectively, market those to the whole range of people who wish to put antennae on them. This could lead to the resolution of many disputes and unrest in the community. It equally could be a source of revenue for local authorities.

I do not wish to eat into Senator Dooley's time. I commend the amendment to the House. I hope we will continue to carry out research in this area and find a conclusion but, in the meantime, all the information we have at our disposal should be made available to mobile telephone users, people in relative proximity to masts and the public in general in order that their minds can be somewhat set to rest.

**Mr. Dooley:** I thank Senator MacSharry for sharing time with me. I welcome the Minister of State, Deputy Seán Power. It is interesting the Minister of State who is now in attendance is attached to the Department of Health and Children. Considerable concern has been expressed in this debate on the issue of health and how telecommunications antennae have the potential to affect the health of certain sections of society, especially children.

There are two elements to the debate. The first one relates to antennae. Some people confuse the issue of masts and antennae. A mast has no impact on one's health. It is the piece of equipment on the mast — the antenna — that is the cause of concern. Many people are concerned about the visual presence of masts and their capacity to affect the value of their property. They are concerned only with property values. It is the antennae which, in effect, emit the non-ionising radiation. They are on the sides of buildings in many locations. In some cases they do not even require planning permission. The mast is the structure that requires planning permission. An unnecessary hype is often created around masts when the focus should be really on antennae and what they do.

A number of contentious issues surround telecommunications masts in County Clare. Some of these relate purely to masts and property values but others relate to concerns about the siting of antennae close to children. I welcome the announcement by the Minister of State, Deputy Browne, that he hopes to have the inter-departmental committee's expert review of the

Oireachtas joint committee's findings dealt with quickly, hopefully, if not by the end of the year then early next year. In some cases with which I am familiar there are concerns in the localities because the masts are sited close to schools. Senator Daly referred to a contentious case in Ennis where a mast is located next to the playing grounds of Éire Óg GAA Club. It is also next door to the location of a new school which was announced today on the Ashline site for Ennis national school and it is close to Cahercalla Hospital and a residential area. The mast is in close proximity to centres where there are large numbers of people for a continuous period of time. I accept the mast may have an effect on the value of neighbouring properties but of more concern is the impact on the children who will be studying and playing in close proximity to it and on the patients in the hospital.

We need clarity in terms of assuring the public on the safety of antennae. Information would appear to suggest that some people are sensitive to non-ionising radiation. The Minister of State referred to this in his contribution. We have seen people who have been affected by it. Nobody is able to determine the long-term ramifications and more information is required. Until such time as the information is available we must be careful to adhere to the guidelines that are set down. It is not good enough to state there are no findings that show potential negative impacts on people's health. It is important that guidelines are in place to ensure masts are located as far as possible away from people and that their lives are not affected by them.

**Mr. U. Burke:** Everybody in the House is aware that few concerns bring communities together more than the proposal for the construction of a mast. Every public representative, both local and national, has been called to meetings in communities in his or her area because of concerns and objections to the proposal for the construction of a mast. People's concerns arise from fear of the inherent danger of antennae and an objection to the intrusiveness of the construction of a mast on the landscape. Health concerns predominate.

The Minister of State, Deputy Browne, stated that the Department of the Environment, Heritage and Local Government published guidelines for planning authorities on telecommunications antennae and support structures in 1996. The guidelines have been ineffective and little applied. I am unsure whether they were ever intended to be implemented. The Minister of State also indicated that the guidelines set out a locational hierarchy in respect of the siting of radio masts and advise that free-standing masts should be located only within or in the immediate surrounds of smaller towns or villages as a last resort. He further stated that if such a location should become necessary, the masts and antennae should be designed and adapted for the specific

location. These guidelines neutralise the original statement. Who will decide what is a last resort? Has there been any examination of the research done by companies seeking to erect masts?

It is laughable for a Minister to say these are the guidelines and that local authorities will have an opportunity to assess and modify them if necessary to suit a particular location when, at the same time we are saying masts should not be located near schools, playgrounds or health centres. The fact is many masts are planted right beside such locations throughout the country. Local Garda stations are a popular location for antennae. Communities are concerned that they are being bullied into a situation by the local authority or the companies involved. If ever an element of consultation were needed, it is when a company chooses a location. It should consult with the community and an ideal site, if it exists, could be found.

EU Directive 2004/40/EC concerns the minimum health and safety requirements regarding the exposure of workers to the risk arising from electromagnetic fields. The expected transposition date is 29 April 2008. Have the Government and Minister of State prepared for the transposition of this directive into our legislation? That is the commitment this Government has made regarding effective legislation in this regard.

The guidelines are laughable. Any Minister proposing them in response to the motion before the House tonight does so as nothing more than a packing operation. They have no substance. The Minister of State pointed out that ComReg conducts an audit of a minimum of 100 sites annually. We have approximately 4,500 masts in the country. That shows who within the Department is concerned about potential risks to health. If we were serious about this the reports on those audits would be given to the communities in which the masts are located. Members of the public who expressed concern and objected to masts should be entitled to know the results of these audits.

One might glibly state the results of these audits are available if one seeks them. I know of a group concerned about the location of a mast within 5 metres of a schoolyard. It asked whether an audit was ever conducted by ComReg. The group was told the report is a public document which it could obtain for itself. Unfortunately such a reply from ComReg, the agency charged with responsibility to carry out the audits, gives the two fingers. For that reason more than any other, all hell breaks loose in an area the minute a notice appears that a particular company intends to erect a mast. Communities have been divided on this issue and people take sides. Somebody may get an over-the-top price for a site to be used for a mast. Often, such a site is not of great commercial use. The person providing the potential location for the mast is ostracised by other people with genuine concerns about risk to health.

[Mr. U. Burke.]

No local authority can monitor the concept of co-location. It should not be the responsibility of a local authority to direct the planning section towards a co-location site. Those who wish to erect a mast should be forced to prove no other alternative exists. Co-location should occur wherever possible.

**Ms Ormonde:** I wish to share my time with Senator Mansergh.

**An Cathaoirleach:** Each Senator will have four minutes.

**Ms Ormonde:** I will be extremely brief because many of the same points have been reiterated. I am glad this motion was put down, even though it was by the Opposition. This debate should take place. Every public representative in Ireland has faced the problem of these masts suddenly appearing. One must agree with aspects of the motion put down by Fine Gael. Concerns are raised when a mast goes up in close proximity to a school, child care facilities or a hospital which must be taken into account. We must also get the balance right to give reassurance that no health problems exist.

It is important that local authorities do not wait until a planning application is made for a mast. They should be ahead of such an application and well-equipped with guidelines on what is acceptable. Where it is necessary, local authorities should facilitate a community in an area where work on a mast begins. My experience suggests nothing causes more disturbance in a community than the erection of a mast. Often, an objection is made to a mast because of its scenic intrusion. The mast itself is not a cause for concern. The problem is the antennae which will emit radiation. It would be useful to suggest to local authorities that they discuss the matter before it arises. Often, we react to a sudden situation when a planning application for a structure is made and then all hell breaks loose.

Most local authorities should be well-acquainted with the national guidelines to give reassurance. Such reassurance has been given in the amendment regarding the two reports of the World Health Authority which state no indications of any effects on health exist. In light of this we must focus on the area of planning. If we got that right we would not have fears. A public campaign is necessary to allay fears that these masts are of great concern to our health. I do not have more to state. Local authorities have a major role in this matter. This discussion is welcome and long overdue.

**Dr. Mansergh:** While I welcome the Minister of State and support the Government motion, I commend Fine Gael for putting down the topic for discussion as it is a matter of concern throughout the country. I agree in particular with the pre-

vious speaker and with all of the points made by Senator Dooley.

Mobile telephones are of enormous benefit to individuals, families and the economy. In a Third World context, we heard about the benefit they are to continents such as Africa. None of that is in dispute and given the current state of technology we probably need masts. Perhaps as Senator O'Toole suggested the problem will disappear as technology advances.

I agree with the conclusions with the World Health Organisation. In the majority of cases, no health effects occur. However, the precautionary principle applies regarding location. I would be only secondarily concerned with matters such as aesthetics and property prices, which I do not believe to be key issues. However, there is evidence that a few individuals are hypersensitive to radiation and there certainly will be doctors who would provide evidence in writing of the effects that a few individuals appear to be suffering.

A well known case is that of a Tipperary farmer, John Ryan, who has received much publicity in the national media. I admit that every time I pass the mast site, which is perhaps one mile from the Tipperary to Cashel road, my mobile telephone lights up in a way it does not do anywhere else on the journey, which suggests there are pretty powerful signals in the vicinity. My concern is that the agreement with the farmer was totally unbalanced. Vodafone, the company concerned, had the option of getting out of the agreement within one year if that was in its interests, or if the mast was in some way ineffective, but the farmer was forced to live with the mast for several years. It scarcely would have been in his or his family's financial interest to object to the mast given that quite significant sums are paid each year to farmers.

As legislators, we must take into account the very real possibility, or even likelihood, that there will be an impact on a few hypersensitive individuals. We must create a regime that caters for such an eventuality and that perhaps *in extremis* allows a mast to be relocated.

Senator O'Toole referred to the many different types of technology. There is undoubtedly a question of adjustment and of people's need to get used to technology. We must bring the public with us and I am not sure dismissing all fears as groundless is necessarily the right way to proceed given it is difficult to know for certain whether this is the case. My view is that the effect of masts on most people is minimal and not damaging to health but we must apply the precautionary principle. We need to cater for individual cases of hypersensitivity and should not pretend such cases do not exist.

**Mr. J. Phelan:** I welcome the Minister of State, Deputy Brendan Smith. I did not have the opportunity to listen to all the other contributions but I have heard a few speakers from the Government and Opposition sides. It is a puzzle to

understand why the Government put down an amendment as all of the Government speakers to whom I listened agreed with the motion. There is nothing controversial in the wording of the motion, particularly given what Government speakers have stated during the debate. The motion is a simple one which expresses concerns following recent reports, calls on the Government to review the existing guidelines and empowers the Radiological Protection Institute to carry out monitoring. The Government amendment is unnecessary.

I am happy to support the motion. As one who is involved in politics, I could not be against the use of mobile telephones. They are a curse in many respects but a necessary evil given we would not be able to do our jobs without access to mobile telephone technology. However, the crucial issue is the location of masts and antennae.

Two arguments are ongoing. Senator Mansergh stated that he did not have a problem with the aesthetics of masts but I do have such a problem. There is a proliferation of mast structures at a number of locations in my area of Carlow and Kilkenny. I served on Kilkenny County Council in its previous term and know it included a paragraph on co-location in its last two county development plans. Despite this, I am not aware of any location in County Kilkenny where more than one mobile telephone company uses the same mast structure. This does not make sense if it is the policy of the council to implement co-location. None of the companies co-locate whereas some locations have five or six masts.

Last year at my clinic I received a planning query from a gentleman who noticed the erection of a new planning application at Corbally Wood, Piltown, County Kilkenny. I asked the local authority to investigate the number of masts on the hill. It took a couple of months to do so but the council eventually discovered five masts located there in varying degrees of obedience to the planning laws. It beggars belief and makes no sense that each of the major mobile telephone companies had a mast structure on that hill but could not share a mast for their antennae.

Senator Kenneally will be familiar with the village of Dungarvan, County Kilkenny, which is located on the N9 Dublin to Waterford road. As one enters the village from Dublin, the facing hill is known as Coppengh Hill, which is located between Thomastown and Graiguenamanagh, a very scenic part of the world. Three masts of different mobile companies are located virtually back to back at the most visually obtrusive point on the hill. It makes no sense that the companies could not share the one structure. It will take effort by central Government to ensure local authorities insist telecommunications companies share masts. I encourage the Department and the Government to take that route.

In recent years there has been a proliferation of booster antennae in different locations

throughout the country, mostly in urban areas. A conflict of interest arises in County Kilkenny where the county council has allowed a telecommunications company to install booster antennae on a water tower immediately behind a local authority housing estate. It transpires such antennae do not require planning permission as they are within the exempt category. However, it is not appropriate or acceptable that a local authority would accept funding from such a source. It clearly suggests a conflict of interest would arise if and when the council deals with planning applications from the same company for different locations. This should not be allowed now or in the future. I ask that whatever guidelines are issued from this date would take account of that and make sure the problem does not arise.

A similar situation has arisen throughout the country with regard to Garda stations and many of the agricultural companies, creameries in particular, which have similar arrangements with telecommunications companies whereby booster antennae are supplied, most often in built up areas where there may have been a coverage problem in isolated pockets. These antennae are often located very close to schools or community facilities. Irrespective of whether we like it, significant question marks hang over the possible health implications of masts. I do not claim to possess any in-depth knowledge in that respect but Senator Mansergh referred to the precautionary principle and I agree with him wholeheartedly on that point.

My final point concerns another problem I have seen emerge in counties Kilkenny and Carlow since my involvement in politics began in recent years. Most local authorities grant permissions for these structures for period of five years. Almost invariably these telecommunications companies allow the planning permissions to lapse before re-applying. I have yet to find an exception in Kilkenny. If they have planning permission for five years, they operate for six years before submitting a new application to continue at that location, usually after a complaint or inquiry. That is unacceptable and should be held against them when they re-apply for planning permission. They deliberately allow the permission to lapse for as long as possible and do nothing about it until somebody questions them.

There are three issues involved, namely, allowing planning permission to lapse, booster antennae and particularly the role of Government agencies and local authorities in allowing their facilities to be used to hold them, and co-location. If those three points could be addressed we could have a resolution. I am disappointed the Government has an amendment to a harmless motion, which seeks only to get information on this contentious issue. I am glad to support the motion in the name of Senator Finucane and my colleagues.

**Mr. Finucane:** How long do I have?

**An Leas-Chathaoirleach:** The Senator has five minutes.

**Mr. Finucane:** I thank all the speakers. Oireachtas representatives in most parts of the country have been under pressure on this issue. Senator John Phelan is correct that the motion was on the Order Paper for some time. When it was put on the Order Paper we tried to ensure we got cross-party support for it. We expressed our concern, which had been expressed by most people here, and asked for a review of the national guidelines and for the Radiological Protection Institute to monitor emissions from telecommunication masts and other installations that emit ionising and non-ionising radiation. Monitoring by the RPI was recommended by the Oireachtas Joint Committee on Communications, Marine and National Resources. As the RPI was responsible for that activity, we felt it would carry much respect with people regarding its work on the masts and any emissions from them.

We used the plural "houses" because we are conscious of concentrations of houses together, schools, community centres or areas that attract a large population. This was stitched into the record. We are particularly concerned about primary school children, but also older children. In his statement the Minister said, "Under section 28 of the Planning and Development Act 2000, planning authorities are required to have regard to any ministerial guidelines in the performance of their functions." He also said, "The guidelines further advise that free-standing masts should only be located in a residential area or beside schools as a last resort and if all the alternatives are unavailable or unsuitable." The guidelines should be more definitive. They should specify that no mobile telephone masts should be erected near schools, community centres or areas of high population density.

I go further than that. Mobile telephone companies must go through the planning process to erect their masts and all the attendant apparatus and this allows people to put forward their objections to the siting of the mast. At least there is a process to go through. However, because of a decision made in 2000, it is possible for the OPW, or any Government body or Garda station to erect huge masts with transmitters and antennae without allowing the community to protest. Garda stations are usually surrounded by large urban areas. It is farcical and unjust. What happened in Scotland in 2001 should happen here. None of those masts, antennae or transmitters should be exempted from planning.

**Mr. J. Phelan:** Hear, hear.

**Mr. Finucane:** Even if they put up an antennae on a mast there should be communication with the council to approve it. It is fine to say we included exemptions in the Planning and Development Act 2000. The impetus at that time

was to accelerate the development of mobile telecommunications. The Department put pressure on us saying that modern telecommunications would enhance industrial development. The Planning and Development Act took that into consideration. Although we have more than 4,500 masts around the country, any of us will have noticed that there are two or three planning applications for masts per month. That is surprising to many people who would have thought with the length of time we have had masts and mobile telephones we would be reaching saturation. The Minister said earlier that there are more than 4 million mobile telephones in Ireland and a penetration rate of 103%. One would have anticipated a diminishing rather than an increasing number of mast applications.

I made the point earlier that there is no justification for three different companies within a small area in a townland having three different masts. It is wrong.

**Mr. J. Phelan:** Hear, hear.

**Mr. Finucane:** Co-location should be encouraged in that situation. Because of commercial discipline, the mobile telephone companies will not make that decision unless a directive is given to them. They will pay lip service to the idea of co-location, but because of a tested arrangement in different companies, they can always say they requested co-location with the other companies but it was not possible. It does not happen. As we have more than 4,500 mobile telephone masts in this country, only 250 of which are co-located, it is time we examined the situation.

Local authorities should include a telecommunications section in their county development plans. When a mast is erected in an area most of us are invited to a public meeting. Concerns are often expressed in such meetings about people accessing the Internet and finding out information about health risks and other issues. It is a pity the local authorities or the Department of Communications, Marine and Natural Resources do not have a fact-finding thesis about these masts on their web sites to explain the situation rather than leaving people to go through the planning process and make their objections by trial and error.

I have been interested in the discussion about this motion. It is disappointing the motion was not supported by the Government. The Minister

has emphasised what we said about the WHO jury being out on the health aspects of mobile telephone

masts and we agree with him. I would take cognisance of what Sir William Stewart said in his definitive 2000 document on mobile telephones in the UK. He advocated the precautionary principle in school situations. A directive should be made that masts should not be allowed near schools, community centres or large concen-

7 o'clock

trations of houses. If we were sincere in our approach we would do that.

I expressed my concern earlier on 3G licences and the new technology. Will this lead to a forest of extra masts throughout the country? In the UK, £22.5 billion was paid by a number of companies to get a 3G licence. It is huge revenue for

the Government. The Office of Public Works stated recently that erecting masts at Garda stations and so on is a good revenue earner.

It is time we considered this matter and that is why I tabled the motion this evening. I am glad I did so and I thank Members for their support.

Amendment put.

The Seanad divided: Tá, 26; Níl, 15.

Tá

Brady, Cyprian.  
Brennan, Michael.  
Cox, Margaret.  
Daly, Brendan.  
Dardis, John.  
Dooley, Timmy.  
Fitzgerald, Liam.  
Glynn, Camillus.  
Hanafin, John.  
Kenneally, Brendan.  
Kitt, Michael P.  
Leyden, Terry.  
Lydon, Donal J.

MacSharry, Marc.  
Mansergh, Martin.  
Minihan, John.  
Mooney, Paschal C.  
Morrissey, Tom.  
Moylan, Pat.  
Ó Murchú, Labhrás.  
O'Brien, Francis.  
Ormonde, Ann.  
Phelan, Kieran.  
Scanlon, Eamon.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bradford, Paul.  
Browne, Fergal.  
Burke, Paddy.  
Burke, Ulick.  
Coghlan, Paul.  
Coonan, Noel.  
Cummins, Maurice.  
Feighan, Frank.

Finucane, Michael.  
Hayes, Brian.  
McHugh, Joe.  
Norris, David.  
Phelan, John.  
Ross, Shane.  
Tuffy, Joanna.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Cummins and Finucane.

Amendment declared carried.

Motion, as amended, put and declared carried.

**An Leas-Chathaoirleach:** When is it proposed to sit again?

**Mr. Kenneally:** It is proposed to sit again at 10.30 a.m. tomorrow, Thursday, 9 November 2006.

### Adjournment Matters.

#### National Parks.

**Mr. Coghlan:** I welcome the Minister to the House. This matter has caused some controversy locally because of the opposing points of views and I am anxious to hear the official line. An official complaint was made to the European Commission regarding the fencing project. I understand the need for fencing in order to provide for regeneration. However, the EU habitats directive and the UNESCO biosphere reserve designation must be considered. A study by Dr. Daniel Kelly of Trinity College Dublin shows that fencing off areas to all grazers could

lead to an overall reduction in plant biodiversity. The native woodland scheme guidelines, which should improve plant biodiversity, must be examined. Would a limited amount of grazing not be beneficial to the woodland ecosystem? Some discussion took place behind closed doors but no agreement was reached. What are the views of the Minister on the two independent reports compiled by Mr. Bill Quirke, a professional ecologist? The Minister's assurance that there will be no damage or act of violence regarding this project is of vital importance. Is funding made available from Europe for the project?

The red deer are naturally woodland animals. Is the Minister satisfied that by excluding them from these woods he is not denying them important winter and calving refuge? Can he ensure the complete exclusion of trespassing sheep? It is not possible to fence the deer in or the sheep out. There is continual trespass and the area is treated as a commonage by a small number of people.

What is the official number of red deer in the Killarney National Park? A cull has been suggested if numbers are high but I would prefer if the sika deer were removed without disturbing red deer. Can the Minister assure the House that the mosses, ferns and lichens for which the wood-

[Mr. Coghlan.]

land is internationally famous will not suffer a reduction because of the project?

**Minister for the Environment, Heritage and Local Government (Mr. Roche):** I thank the Senator for his passionate interest in Killarney National Park, an interest I share. The park is an extraordinary asset, one of the jewels in the crown. It is a requirement of the European Communities (Natural Habitats) Regulations 1997, which transposed the European habitats directive, that appropriate steps are taken to avoid the deterioration of natural habitats such as the old oak woodland in Killarney National Park. As members of Wicklow County Council, Senator Ross and I battled to save woodland.

**Mr. Coghlan:** I hope the members were successful.

**Mr. Roche:** We were. Under strategy 1.4 of the Killarney National Park management plan 2005-09, it is a priority of the national park policy to provide conditions where woodland regeneration and expansion can occur, including the use of fencing strategies to protect against overgrazing by ruminant animals. This management plan has regard to the park's status as a UNESCO biosphere reserve and it was adopted by all stakeholders on the Killarney National Park liaison committee including the Killarney Nature Conservation Group, which now seems to be campaigning against this important initiative to help the regeneration of the woodlands. I regret this.

The programme referred to by the Senator is the erection of a medium-disturbance deer fence over an area of some 150 hectares. The fencing is being done with the consent and financial support of the forest service under the native woodland scheme. The erection of the fencing is necessary because the presence of deer and feral goats has resulted in there being virtually no natural regeneration of native trees and no young or medium-aged oak trees in the woodland. The forest service has estimated that, unless the problem is addressed, there will be no woodland in the area in 80 or 90 years' time. Natural regeneration is important, especially in woodland. I have not had the opportunity to see this but I am told that is precisely the position there.

The woodland is being fenced in separate blocks with corridors several hundred metres long in between. This will allow deer to move through the woodland between their traditional grazing areas. It is envisaged that the fence will be left in place for a period of ten to 15 years, and will be removed as soon as monitoring shows that sustainable browsing and grazing can be put in place. Once oak reaches a particular point, it does not need to be fenced but, before that, is susceptible to the activities of ruminant animals. The forest service has confirmed the view of my Department that the erection of the fencing is the

only viable way to restore semi-natural woodland to this area.

The fencing programme has been the subject of expert assessments by my Department's ecologists and by ecological and archaeological experts of the forest service. The work is also being undertaken in accordance with a detailed forest service-approved management plan that has been prepared by an ecologist of my Department and an experienced native woodland scheme forester. As the works are directly connected with, and necessary to, the management of the site, the carrying out of an additional environmental impact assessment under the habitats directive is not required.

I am aware of recent reports in the media of complaints about the fencing works, particularly in regard to damage to famine-era field walls and lazy beds and the displacement of a boulder from the corner of a single-room roofless cottage. The conditions laid down by the forest service archaeologist relating to recorded monuments have been adhered to in all cases. Furthermore, no element of this 18th or 19th century settlement and farming complex has been entered in the register of historical monuments, the record of monuments and places, or the record of protected structures for County Kerry. It is the view of the forest service archaeologist that, while it was unfortunate that some damage was done to these features, it could not have been totally avoided. The forest service has stipulated certain remedial works and my Department has agreed to carry these out and to rebuild any old wall that has been interfered with during the fencing operation.

The forest service has met the complainants on several occasions, including at two on-site meetings, to explain the rationale behind the fencing programme and has also responded to requests for information that the forest service has received from the European Commission. The fencing programme is essential for the survival of this woodland and for compliance with the requirements of the Habitats Directive. The project has been the subject of several expert assessments and the works are being conducted in accordance with an approved native woodland scheme management plan and without interfering with any protected structure or recorded monument in the area. I assure the Senator that these essential works have been and will continue to be carried out to the highest conservation standards.

I do not have the information he sought on the number of red deer but will arrange for it to be sent to him. I note too his point about the non-native sika deer, which are smaller animals, and the potential for them to invade and cause damage. I will ensure that is taken on board and will address that issue in my response.

#### **Water and Sewerage Schemes.**

**Mr. Kitt:** I thank the Minister for the Environment, Heritage and Local Government for

coming into the House. There are problems with the water supply and sewerage in Ballygar but tonight I will concentrate on the water supply. Ballygar is a growing town with a primary and secondary school. People are concerned about the poor water pressure in the town and about how the emergency services would cope in the event of a fire. The scheme is number one on Galway County Council's list. It is possible to provide water without finding new sources by bringing the water from Mountbellew to Ballygar. At present the water supply serves Newbridge, a village between these two towns. That is an obvious way to extend the scheme. It is a major concern for the people in the area who have held numerous meetings about the issue. I hope the Minister will be able to tell me that the report from Galway County Council is in his Department, that it is a priority and that there will be progress on the scheme.

**Mr. Roche:** I am in the pleasant position of being able to say that there have been significant changes in this matter. Galway County Council rated Ballygar very far down the list and has now changed its mind.

The Department's water service investment programme 2005-07, published in December 2005, includes 60 major water and sewerage schemes for Galway with a value of more than €451 million. Many areas are benefiting from schemes to improve the coverage and quality of the public water supply network. In addition, towns and villages throughout the county are getting new and upgraded sewerage schemes.

When selecting individual scheme proposals for approval under the water services investment programme, my Department takes into account the priorities identified by the local authorities. That is important because the local councils should know what the priorities are. Ballygar was in eighth position on the list of water schemes submitted by Galway County Council in its 2003 assessment of infrastructural needs. The assessments of needs are the main input to the approval of new schemes by my Department for Exchequer funding. Unfortunately, because of the relatively low rating given to Ballygar by the Galway councillors at the time along with the high level of competing demand for the available funding, the scheme did not make it into subsequent phases of the water services investment programme published in the meantime.

Last March, however, my Department asked all local authorities to undertake completely new assessments of water service needs and priorities for their areas as an input into future updating of the water services investment programme. Galway County Council has submitted its assessment in which it has given Ballygar number one priority for new water schemes. This latest assessment of needs will inform the selection of new schemes for inclusion in the next phase of the water services investment programme.

I assure the Senator that I have listened carefully to what he has said and that it will also be borne in mind when the next batch of new schemes is being considered for approval. That Ballygar was not the number one priority until now is a matter for the councillors who ranked it number eight. I will take the new priority on board when making my final decision.

### **Waste Management.**

**Mr. Ross:** I raise an issue brought to my attention by a company, Leaf Environmental Limited, which has been frustrated in its attempt to get a licence to compete in the waste management sector. There is a general issue to be addressed in this area because Repak has a monopoly. That may not be Repak's fault but it creates a difficulty for consumers in this area, especially small businesses. Leaf's representations to me suggest that its applications in this area have been bureaucratically frustrated in a verbal communication by the Minister's Department and it has difficulty getting into this sector. It is at a loss to understand why Repak has a monopoly. What are the guidelines for applications for a licence or ministerial approval? What are the timescales for those applying? What are the restrictions and why are there bars to entry? Why can there not be a free-for-all in this area? Is it a healthy situation that Repak dominates this area?

There already is a precedent for competition in the electrical and electronic waste sector between WEEE Ireland and the European Recycling Platform. There is no reason why there should not be unfettered competition in this area. Although there may have not been too many applications, there has only been one licence refusal for a company in the waste compliance area, the reasons for which are not publically known. The broad principle is that any obstacles to smaller companies getting into this area are bound willy-nilly to be anti-consumer. If Repak is allowed to set its own prices, it will inevitably set prices which could involve profiteering. I am not suggesting this is happening but the area is open to profiteering if one company dominates the sector. If there are obstructions, what will the Minister do to remove them? Will he look benignly on applications, provided they meet existing regulations?

**Mr. Roche:** Senator Ross and I were councillors in County Wicklow when bin collection services were first privatised. None of us could have foreseen what the waste collection sector would become. Repak has played a remarkable role in our recycling waste performance.

In recent years there have been rapid changes in the waste management sector due to the increased involvement of a developing private sector and the changing role of local authorities as service providers and competition in the industry. When we designed the WEEE scheme, I made certain two operators were in the field. It

[Mr. Roche.]

has been phenomenally successful with 300 jobs created and several recycling centres established. I am not disposed to discouraging competition.

A more robust system of environmental regulation has been put in place to ensure the waste management sector can operate in a sustainable manner. To date no similarly comprehensive system of socio-economic regulation has been considered necessary. It is time to re-examine this issue. The 2004 policy document, *Taking Stock and Moving Forward*, identified the need to consider such a development.

To advance this, I recently published a consultation paper on the possible regulation of the waste sector. Submissions were invited on whether there is a need for a regulator for the sector, what model of regulator might be most appropriate and what powers any such regulator should be given. While it is recognised that competitive markets may work perfectly well without any need for sector specific regulation, the waste management sector may benefit from some form of regulatory framework. There has been a propensity for strong individual market dominance to build up in this area.

The consultation paper outlined the main issues and alternative models of regulation which could be applied. It also presented alternative courses of action which could be followed if it is decided that regulation is not the most appropriate option to take. Key issues raised in the consultation paper included questions such as which model of regulation would be most appropriate for the waste sector? Is there a more appropriate alternative to regulation of the waste sector such as incentivisation through the use of economic instruments? Is it appropriate not to intervene?

Who would regulate the waste sector? Should a new regulator be appointed?

Senator Ross will be aware of my aversion to creating quangos. Should additional regulatory powers be assigned to an existing regulator? What combination of services would fall within a regulator's remit? What powers would a waste regulator have? Powers in economic issues could include the determination of an appropriate waste-charging structure and the supervision of competitive tendering arrangements. Operational issues could include the issuing and enforcement of waste collection permits.

Over 50 submissions have been received. I am looking forward to considering the views of the various stakeholders. When all the submissions have been examined, I intend to finalise new policy proposals. These will seek to ensure the waste management sector delivers not just in environmental terms but also in terms of broad support for sustainable development of our rapidly expanding economy and having regard to the need to maximise service to the public.

I am not aware of an application being discouraged by the Department. If Senator Ross gives me more details on it, I will ensure he receives a comprehensive reply.

**Mr. Ross:** Will the Minister facilitate this specific application provided it meets with the regulations?

**Mr. Roche:** I will not give an undertaking on that because I do not know what is specifically involved. The Senator referred to verbal discouragement by the Department. If he gives me a note on that, I will have it pursued and give him a comprehensive response.

The Seanad adjourned at 7.35 p.m. until 10.30 a.m. on Thursday, 9 November 2006.